IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

NORTHERN LINES MERGER CASE

No. 28

UNITED STATES OF AMERICA, APPELLANT

v.

INTERSTATE COMMERCE COMMISSION, ET AL.

No. 38

CHARLES E. BRUNDAGE, ET AL., APPELLANTS

v.

INTERSTATE COMMERCE COMMISSION, ET AL.

No. 43

CITY OF AUBURN, APPELLANT

v.

INTERSTATE COMMERCE COMMISSION, ET AL.

No. 44

LIVINGSTON ANTI-MERGER COMMITTEE, APPELLANT

v.

INTERSTATE COMMERCE COMMISSION, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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SERVICE DATE
APRIL 24, 1969

ORDER

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21478

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.—MERGER, ETC.—GREAT NORTHERN RAILWAY COMPANY, ET AL.

Finance Docket No. 21479

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.—STOCK ISSUANCE, ETC.

Finance Docket No. 21480

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC. ET AL. CONSTRUCTION AND ABANDONMENT

IN THE MATTER OF EXTENSION OF THE PERIOD WITHIN WHICH THE AUTHORIZATIONS PREVIOUSLY GRANTED HEREIN MAY BE EXERCISED

PRESENT: VIRGINIA MAE BROWN, Chairman to whom the above matter has been assigned for action thereon.

Upon consideration of the record in the above-entitled proceedings, and of the stay order entered on December 16, 1968, by the Supreme Court of the United States in *United States of America* v. *United States, et al.*, No. 899, October Term, 1968, and in *City of Auburn* v. *United States, et al.*, No. 999, October Term, 1968; and good cause appearing therefor:

It is ordered, That the period within which the authorizations previously granted herein may be exercised be, and is hereby, extended to May 4, 1970.

Dated at Washington, D. C., this 23d day of April, 1969.

By the Commission, Chairman Brown.

H. NEIL GARSON
Secretary

[SEAL]

REPORT OF HEARING EXAMINER

INTERSTATE COMMERCE COMMISSION

Finance Docket No. 21478
Finance Docket No. 21479
Finance Docket No. 21480

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.—MERGER, ETC.—GREAT NORTHERN RAILWAY COMPANY, ET AL.

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INTERSTATE COMMERCE COMMISSION

Served August 24, 1964

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and served on all other parties in interest within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of such exceptions. At the expiration of said period for the filing of exceptions, the recommended order will become the order of the Commission and will become effective unless exceptions have been seasonably filed or the order has been stayed or postponed by the Commission. If exceptions are filed, replies to exceptions may be filed within 20 days after the final date for filing of exceptions. It should not be assumed that the recommended order has become effective as the order of the Commission until a notice or order to that effect has been served.

Finance Docket No. 21478 [1]

GREAT NORTHERN PACIFIC & BURLINGTON LINES, INC.—MERGER, ETC.—GREAT NORTHERN RAILWAY COMPANY, ET AL.

Decided

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1. (a) Merger of the properties and franchises, including the motor carrier operating rights of Great Northern Railway Company, Northern Pacific Railway Company, and Pacific Coast R. R. Co., into Great Northern Pacific & Burlington Lines, Inc., for ownership, management and operation;

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[1] This report also embraces Finance Docket Nos. 21479, Chicago, Burlington & Quincy Railroad Company, et al.—Stock Issuance, etc., and 21480, Great Northern Pacific & Burlington Lines, Inc., et al.—Construction and Abandonment.

(b) Acquisition by Great Northern Pacific & Burlington Lines, Inc., of sole or joint control of carriers subsidiary to or affiliated with Great Northern Railway Company, Northern Pacific Railway Company and Pacific Coast R. R. Co., through ownership of stock;

(c) Acquisition by Great Northern Pacific & Burlington Lines, Inc., as successor in interest, of all lease-hold rights, trackage rights and joint ownership in or joint use of any railroad line or lines and terminals incident thereto possessed by Great Northern Railway Company, Northern Pacific Railway Company, and Pacific Coast R. R. Co.;

(d) Subsequent merger of the properties and franchises, including the motor carrier operating rights, of Chicago, Burlington & Quincy Railroad Company, into Great Northern Pacific & Burlington Lines, Inc., for ownership, management and operation;

(e) Acquisition by Great Northern Pacific & Burlington Lines, Inc., of sole or joint control of carriers subsidiary to or affiliated with Chicago, Burlington & Quincy Railroad Company, through ownership of stock;

(f) Acquisition by Great Northern Pacific & Burlington Lines, Inc., of all leasehold rights, trackage rights and joint ownership in or joint use of any railroad line or lines and terminals incident thereto possessed by Chicago, Burlington & Quincy Railroad Company; and

(g) Lease by Great Northern Pacific & Burlington Lines, Inc., of the lines of railroad and other properties owned, used, or operated by Spokane, Portland and Seattle Railway Company, for a term of ten years; and

(h) Acquisition by Great Northern Pacific & Burlington Lines, Inc., through the lease and during the term of said lease, (1) of sole or joint control of carriers subsidiary to or affiliated with Spokane, Portland and Seattle Railway

Company, and (2) of all leasehold rights and trackage rights and joint ownership in or joint use of any railroad line or lines and terminals incident thereto of railroad possessed by Spokane, Portland & Seattle Railway Company, approved and authorized. Conditions prescribed.

2. Authority granted to Chicago, Burlington & Quincy Railroad Company to issue not exceeding $70,000,000 principal amount of its first and refunding 4 percent bonds, due August 1, 2010, to be sold to Great Northern Pacific & Burlington Lines, Inc., at par, plus accrued interest, if any, and proceeds to be used for the purposes set forth herein. Conditions prescribed.

3. Authority granted to Great Northern Pacific & Burlington Lines, Inc.;

   (a) To issue (1) not exceeding 17,500,000 shares of common capital stock, without par value, (2) not exceeding 3,102,333 shares of preferred stock, par value $10 each, (3) not exceeding $71,500,000 principal amount series A consolidated mortgage 4 percent bonds, due October 1, 1984;

   (b) To assume (1) obligations and liabilities of Great Northern Railway Company, Northern Pacific Railway Company, Pacific Coast R. R. Co., Chicago, Burlington & Quincy Railroad Company, and companies subsidiary to or affiliated therewith, including obligations contingently guaranteed either solely by Great Northern Railway Company, Northern Pacific Railway Company, Pacific Coast R. R. Co., Chicago, Burlington & Quincy Railroad Company, or jointly with other guarantors, and (2) during the term of lease, the obligations and liabilities of Spokane, Portland and Seattle Railway Company, and companies subsidiary to or affiliated with, including obligations contingently guaranteed either solely by Spokane, Portland and Seattle Railway Company, or jointly with others;

(c) To pledge $71,500,000 principal amount of Great Northern Pacific & Burlington Lines, Inc., series A, Consolidated mortgage 4 percent bonds, due October 1, 1984, as collateral security under Northern Pacific collateral trust indenture;

(d) To modify and alter the status of the Northern Pacific collateral trust bonds through a supplemental indenture thereto which provides for assumption of Northern Pacific Railway Company's obligations under the Northern Pacific collateral trust indenture, proposed substitution of collateral for the elimination of certain provisions of the collateral trust indenture relating to substitution of collateral, and for grant of a right to the holders of the collateral trust bonds to direct the manner of voting the pledged series A consolidated mortgage bonds; all in connection with proposed mergers and lease. Conditions prescribed. Application for authority under section 20a dismissed in all other respects.

4. Certificates issued:

(a) Authorizing construction by Great Northern Pacific & Burlington Lines, Inc. as successor, of connecting lines of railroad and extensions of lines in Douglas County, Wis., Pine, Stearns, Wadena, Wilkins, Clay and Polk Counties, Minn., Cass and Grand Forks Counties, N. Dak., Lewis and Clark County, Mont., Bonner County, Idaho, Spokane, Whitman and King Counties, Wash., and Multnomah County, Oreg.; and

(b) Permitting abandonment (1) by Great Northern Pacific & Burlington Lines, Inc., as successor, of portions of the lines of railroad of Great Northern Railway Company in Clay County, Minn., Lewis and Clark County, Mont., Spokane County, Wash., and of Northern Pacific Railway Company in Wilkin County, Minn., and Spokane County, Wash.; and (2) by Spokane, Portland and Seattle Railway Company, as lessor, in Spokane County, Wash.; all in connection with proposed mergers and lease. Conditions prescribed.

APPEARANCES

Kenneth F. Burgess, Ray Garrett, John B. Schwemm, D. Robert Thomas, Harold K. Bradford, Jr., Roger T. Crosby, E. T. Conmy, Jr., R. T. Cubbage, Frank S. Farrell, James A. Gillen, Anthony F. Kane, Martin Lucente, Frank J. Magill, Eldon Martin, Earl F. Requa, Woodrow L. Taylor, R. Paul Tjossem, L. E. Torinus, and *James R. Walker* for applicants.

Homer G. Hamilton for the State of Nebraska, *Eldon Martin* for the State of Missouri, The Missouri Farmers Association, The Nebraska Lumber Merchants Association, The North Idaho Economic Development Association, Inc., The Quincy (Ill.) Chamber of Commerce, The Alliance (Nebr.) Chamber of Commerce, and six various shippers, *Henry A. Archambo* for the Minneapolis (Minn.) Traffic Association, *I. N. Early* for the Billings (Mont.) Traffic Bureau, *H. E. Franklin, Jr.*, for the Port of Tacoma, Wash., and the Tacoma (Wash.) Chamber of Commerce, *Gerald E. Franzen* for the Chicago Association of Commerce and Industry, *E. J. Hansen* for the Grand Forks (N. Dak.) Chamber of Commerce and Red River Valley Potato Growers, Association, *J. D. Paul* for the Seattle (Wash.) Chamber of Commerce and the Seattle Traffic Association, *E. C. Pewters* for the Everett (Wash.) Chamber of Commerce, *Robert B. Post* for Cargill, Incorporated, *Harry C. Sundblad* for the Omaha (Nebr.) Chamber of Commerce and the Omaha Grain Exchange, *Erv. A. Timm* for the St. Paul (Minn.) Area Chamber of Commerce, and *Lillian Widmyer* for herself, interveners in support.

John M. Agrey, John C. Stewart, and *Martin Vaaler* for the Public Service Commission of State of North Dakota, *John G. Alley* for the Province of British Columbia (Canada), *J. E. Finsness* for the Fargo (N. Dak.) Chamber of Commerce, and *Fred H. Tolin* for Whatcom County (Wash.) Traffic and Rates Bureau, Alaska Copper Companies, Inc., Washington-Oregon Shippers Cooperative Association, and Van Waters & Rogers, Incorporated, and 227 various other shippers and shipper associations, interveners in conditional support.

Osborne Becklund, *Charles H. Clay*, *F. W. Crouch* and *C. Harold Peterson* for Soo Line Railroad Company, *Gene F. Bennett*, *Edwin R. Eckersall*, *J. C. Garlington*, *Raymond K. Merrill*, *Robert F. Munsell*, *Warren Ploeger*, *Stuart K. Rider, Jr.*, and *Edwin O. Schiewe* for the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, *George L. Buland*, *Charles W. Burkett, Jr.*, *Kenneth M. Judd*, *Thormand A. Miller*, and *Oglesby Young* for the Southern Pacific Company, *Martin Cassell* and *Thomas I. Megan* for the Chicago, Rock Island & Pacific Railroad Company, *Frank W. Davis*, *Charles H. Dickman*, *Richard M. Freeman*, *Harry B. Otis*, and *Edgar Vanneman, Jr.*, for the Chicago and North Western Railway, *Leighton Hatch*, *Walter G. Treanor*, and *E. L. Van Dellen* for the Western Pacific Railroad Company, *L. W. Hobbs*, *Randall B. Kester*, *Francis J. Melia*, and *Howard E. Roos* for the Union Pacific Railroad, and *Starr Thomas* for the Atchison, Topeka and Santa Fe Railway Company, intervening rail carriers.

Joseph E. Quin for Orville F. Freeman, Secretary of Agriculture of the United States, and *Thomas S. Howard* for the United States Department of Justice, interveners in opposition.

Richard Musenbrock for the State of Minnesota and the Minnesota Railroad and Warehouse Commission, *Herman L. Bode* and *C. A. Merkle* for the State of South Dakota and the Public Utilities Commission for the State of South Dakota, *Frank B. Hayes* for the State of Washington, *Waldo F. Wheeler* for the Iowa State Commerce Commission, and *Ronald L. Anderson*, *Jack L. Chestnut*, *Walter F. Mondale*, *Oliver A. Ossanna*, *E[illegible]er Petersen*, *Paul Rasmussen*, and *Otto A. Ratke* for the Minnesota Railroad and Warehouse Commission, *John H. McKeon*, *John Sheehy*, and *Paul Smith* for the Board of Railroad Commissioners of the State of Montana, and *Lloyd G. Hammel* and *John F. Weisser* for the Public Utility Commissioner of Oregon, interveners in opposition.

Arvid M. Falk for the City of Minneapolis (Minn.), *Richard P. Gallager* for the City of Mandan (N. Dak.), *Anthony C. Gospodar* for the City of Breckenridge (Minn.), *Daniel A. Klas* for the City of St. Paul (Minn.),

Alva C. Long for the Cities of Auburn and Sumner (Wash.) and the Auburn (Wash.) Chamber of Commerce, *Toby E. Markewicz* for the City of Superior (Wis.), *R. G. Nerison* for the City of Jamestown (N. Dak.), *Thomas E. Plante* for the City of Duluth (Minn.), *Bernard J. Gallagher* for the Spokane (Wash.), Anti Merger Association, *George Kargianis* for the Seattle (Wash.) Improvement Council, *Thomas Kennedy* for the Missoula (Mont.) Civic Group, *C. W. Leaphart, Jr.*, *W. R. McGee*, and *Webb Sullivan* for the Livingston (Mont.) Anti-Merger Committee, *Harry C. Munger* for the Duluth (Minn.) Volunteer Committee Opposing Merger, and *Robert D. McMullan* for the Clark County (Wash.) Anti-Merger Association, interveners in opposition.

William G. Mahoney for Railway Labor Executives Association, and *E. L. Dirks*, *Charles B. Falconer*, *Robert Lee Kelleher*, *Ernest Monroe*, *J. H. McLaughlin*, *Paul E. Peterson*, and *C. W. Wellnitz*, for various other organizations of railway employees, interveners in opposition.

Joseph R. Dudley for the Minnesota Motor Transport Association, *Clifford Ferguson* for Ed Benedict, and *Samuel R. Freeman* for Wheat Producers Transportation Committee, interveners in opposition.

A. Wilford Larson and *Richard V. Maves* for the Public Service Commission of Wisconsin, *A. C. Stoddard* and *John E. Tormey* for the Michigan Public Service Commission, *Louis B. Dailey* for Northern Pacific Stockholders' Protective Committee, *Philip A. Porter* for the Wisconsin Manufacturers Association, and *Oliver Lee Stewart* for Southwest Oregon Shippers Traffic Association, interveners seeking imposition of specified conditions.

REPORT, CERTIFICATE AND ORDER

RECOMMENDED BY ROBERT H. MURPHY, HEARING EXAMINER

THE APPLICATIONS

By joint application filed February 17, 1961, authority is sought by Great Northern Railway Company (Great Northern),[2] of St. Paul, Minn., Northern Pacific Railway Company (Northern Pacific), also of St. Paul, Pacific Coast R. R. Co. (Pacific Coast), of Seattle, Wash., Chicago, Burlington & Quincy Railroad Company (Burlington), of Chicago, Ill., and Spokane, Portland and Seattle Railway Company (SP&S), of Portland, Oreg., common carriers by railroad subject to Part I of the Interstate Commerce Act, hereinafter called the Act, and Great Northern Pacific & Burlington Lines, Inc. (New Company), not a carrier, of Wilmington, Del., to consummate certain transactions under section 5(2)[3] of the Act, to issue certain securities and assume obligation and liability in respect of securities under section 20a[4] of the Act, and to effect certain extensions and abandonments of lines of railroad under sections 1(18) to 1(20),[5] inclusive, of the Act. The application as filed is divided into four parts, fall into three separate categories of authority sought, and will be considered as three separate related docketed matters, as subsequently discussed.

In part I of the application, docketed in Finance Docket No. 21478, authority is sought under section 5(2) of the Act (1) for merger into New Company of the operations, properties, and franchises of Great Northern, Northern Pacific, and Pacific Coast, upon terms and conditions of agreement of merger, hereinafter referred

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[2] In this report reference to applicants and interveners and others mentioned will be by the distinctive names in their respective corporate titles or by designation shown in parentheses.

[3] 49 U.S.C. 5.

[4] 49 U.S.C. 20a.

[5] 49 U.S.C. 1.

to as the Northern Lines merger agreement, subsequently discussed, for ownership, management and operation; (2) for acquisition by New Company, through ownership of capital stock, of sole or joint control, as the case may be, of all carriers subsidiary to or affiliated with Great Northern and Northern Pacific at the time of merger; (3) for acquisition by New Company of all leasehold rights in respect of, all trackage rights over, and all joint ownership in and rights of joint use of, any railroad line or lines and terminals incident thereto possessed by Great Northern, Northern Pacific, and Pacific Coast at the time of merger; (4) subsequently thereto, for merger into New Company of the operations, properties, and franchises of Burlington, upon the terms and conditions of agreement of merger, hereinafter referred to as the Burlington merger agreement, subsequently discussed, for ownership, management and operation; (5) for acquisition by New Company, through ownership of capital stock, of sole or joint control, as the case may be, of all carriers subsidiary to or affiliated with Burlington at the time of merger; (6) for acquisition by New Company of all leasehold rights in respect of, all trackage rights over, and all joint ownership in and rights of joint use of, any railroad line or lines and terminals incident thereto possessed by Burlington at the time of merger; (7) for lease by New Company of the properties and assets of SP&S for a term of 10 years, upon terms and conditions of indenture of lease hereinafter referred to as the SP&S lease, subsequently discussed; (8) for acquisition and exercise during the term of lease by New Company as such lessee of sole or joint control, as the case may be, of all carriers subsidiary to or affiliated with SP&S at the time of the lease; and (9) for acquisition and exercise during the term of lease by New Company as lessee of all leasehold rights in respect of, all trackage rights over, and all joint ownership in and rights of joint use of, any railroad line or lines and terminals incident thereto possessed by SP&S at the time of lease.

In part II of the application docketed in Finance Docket No. 21479, and, in connection with and pursuant

to the transactions for which authority is sought in Finance Docket No. 21478, authority is sought under section 20a of the Act by New Company (1) to issue of such principal amount, not in excess of $71,500,000, of its series A consolidated mortgage bonds as shall be equal to the principal amount of Northern Pacific refunding and improvement mortgage bonds then pledged under the Northern Pacific collateral trust indenture and to pledge such series A consolidated mortgage bonds under such Northern Pacific collateral trust indenture, to be effected under a supplemental indenture thereto, in substitution for, and upon release from pledge of, an equal principal amount of Northern Pacific refunding and improvement mortgage bonds pledged under the Northern Pacific collateral trust indenture; (2) to issue such shares of its $10 par value 5½ percent cumulative preferred capital stock, and such shares of its no par value common capital stock required by the terms of the Northern Lines merger agreement to be issued to stockholders of Great Northern and Northern Pacific upon merger of Great Northern, Northen Pacific and Pacific Coast into the New Company; (3) to issue such additional shares of its preferred and common capital stock as may be required to be issued upon the exercise, subsequent to such merger, of restricted stock options, issued under the restricted stock option plans of Great Northern and Northern Pacific, respectively, outstanding at the time of merger; (4) to assume all obligation and liability of Great Northern and Northern Pacific in respect of securities; (5) to assume during the term of and as provided in SP&S lease all obligation and liability of SP&S in respect of securities; (6) to issue such shares of its no par value common capital stock required by the terms of the Burlington merger agreement to be issued to stockholders of Burlington upon merger of Burlington into New Company; and (7) to assume all obligation and liability of Burlington in respect of securities; and by Burlington, prior to merger into New Company, to issue and sell to New Company at principal amount and accrued interest, if any, $70,000,000 principal amount of its first and refunding series 2010, 4 percent bonds, se-

cured by its first and refunding mortgage, dated February 1, 1921. By amendment filed June 22, 1961, in Finance Docket No. 21479, and, in connection with and contingent upon approval and consummation of the transactions described in Finance Docket No. 21478, and the transactions described wherein authority is sought under section 20a of the Act for New Company to assume all obligation and liability of Northern Pacific in respect of securities and to issue not exceeding $71,500,000 principal amount of New Company's series A consolidated mortgage bonds and pledge them under the Northern Pacific collateral trust indenture in substitution for, and upon release of pledge of, an equal principal amount of Northern Pacific refunding and improvement mortgage bonds now pledged under such indenture, authority is also sought by New Company under the same section of the Act specifically to concurrently alter the status of the Northern Pacific collateral trust bonds by modification of the Northern Pacific collateral trust indenture in the form of a supplemental indenture thereto, which, in addition to the provisions for assumption by New Company of all of Northern Pacific's obligations under the collateral trust indenture, provides for proposed substitution of collateral, for elimination of certain provisions of the collateral trust indenture relating to substitution of collateral, and for grant of rights to holders of collateral trust bonds to direct the manner of voting the pledged series A consolidated mortgage bonds, unless the Commission finds that no authority in respect of request covered by said amendment is required by law.

In parts III and IV of the application docketed as Finance Docket No. 21480, and, in connection with the transactions for which authority is sought in Finance Docket No. 21478, authority is sought under sections 1(18) to 1(20) inclusive, of the Act by New Company and SP&S for certificates of public convenience and necessity contingent upon approval and consummation of the merger and lease transactions for which authority is sought in Finance Docket No. 21478, permitting (a) New Company, and SP&S to the extent of its interest as owner and lessor under proposed lease of portions of

the extensions described in items (19), (21), and (24) of appendix A hereto covering matters set forth in part II, to construct and operate the extensions and lines of railroad described in items (1) through (24) inclusive, of appendix A, and (b) New Company, and SP&S with respect to the lines described in items (5) and (7) of appendix B covering matters set forth in part IV, to physically abandon the portions of existing lines of railroad described items (1) through (7) inclusive, in appendix B, contingent, as to each abandonment, upon completion of the respective new portion or portions of line referred to in the item relating to such abandonment. No railroad in the territory involved in the proposed transactions has requested inclusion in the transactions.

The several docketed applications described are submitted together as interdependent parts of a proposal for unified operation, control and management of the properties and franchises of the applicant companies. Subsequent to the filing of the applications, numerous resolutions of cities, municipalities, communities, and other organizations, letters of support and letters of protest and/or objection in respect of the applications were received. By order of the Commission, Commissioner Tuggle, entered July 7, 1961, the matters were referred to the hearing examiner for hearing and for the recommendation of an appropriate order accompanied by reasons therefor. By the terms of that order, hearing was set for September 19, 1961, at St. Paul. Petitions were filed by several intervening parties seeking, among other things, postponement of the hearing date, to which applicants replied, and by order of the Commission, Division 3, the proceedings were reassigned for hearing before the hearing examiner on October 10, 1961. Extensive public hearings commencing on the last mentioned date and terminating on July 10, 1962, were held in several sessions comprising 82 days of hearing at various points[6] throughout the territory involved.

[6] St. Paul, Minneapolis, and Duluth, Minn., Chicago, Ill., Des Moines, Iowa, Omaha, Nebr., Portland, Oreg., Seattle, and Spokane, Was., Fargo and Bismarck, N. Dak., Aberdeen, S. Dak., and Billings, Great Falls, Helena and Missoula, Mont.

Numerous petitions for permission to intervene in the proceedings were granted before and during the hearings. Pursuant to such petitions filed some 427 petitioners were permitted to intervene in the proceedings. Such petitions were advanced for several reasons, either in support of the proposals, in opposition to the proposals, or as their interests might appear. However, some who were permitted to intervene failed to enter appearance at the hearings, but evidence of their concern was presented either through interveners for applicants or other interveners. Others failed to enter appearance at the hearings or otherwise pursue their interest, and their failure to participate or otherwise pursue their interest should be considered only as expressions of interest without probative support. In addition to applicants, 310 interveners, set forth in appendix C hereto, whose interests comprise a variety of categories, participated through appearance of counsel or their representatives and some introduced evidence.

Support for the proposals was evidenced by applicants, and by numerous interveners, shippers and receivers of freight, associations of shippers or shipper organizations, by chambers of commerce, and by others, including a number of agencies of government, city and state.

Opposition to the proposals was evidenced by numerous agencies of government, city, state and federal, by certain rail carriers, by organizations of railway employees, and by civic and community groups, and others.

Some participation, principally by certain intervening rail carriers, some shippers and receivers of freight, and some agencies of government, was predicated on a desire to obtain, in the event of approval of the proposals, imposition of conditions favorable to certain intervening rail carriers [7] or to support stipulations and agreements entered into by and between certain intervening rail carriers [8] and applicants respecting establishment of or

[7] Chicago, Milwaukee, St. Paul & Pacific Railroad Co. (Milwaukee), and Chicago and North Western Railway Co. (C&NW).

[8] Soo Line Railroad Co. (Soo), Union Pacific Railroad Company (Union Pacific), Southern Pacific Company (Southern Pacific),

maintenance of gateways for the movement of traffic and/or traffic and operating relationships.

Opposition by an organization representing certain minority stockholders of Northern Pacific was directed to objections in respect of ratio of exchange of values ascribed to certain properties.

Briefs were filed by applicants and separately by each of the following interveners: C&NW, Milwaukee, Southern Pacific, Union Pacific, Western Pacific, Railway Labor Executives' Association (RLEA), Northern Pacific Stockholders' Protective Committee (NP Stockholders' Committee), Province of British Columbia, Canada (Province), Secretary of Agriculture of the United States (Agriculture), United States Department of Justice (Justice), Iowa State Commerce Commission (Iowa), State of Minnesota and its Railroad and Warehouse Commission (Minnesota), Public Utility Commissioner of Oregon (Oregon), Public Utilities Commission of the State of South Dakota (South Dakota), Board of Railroad Commissioners of the State of Montana (Montana), State of Washington, Public Service Commission of Wisconsin (Wisconsin), Public Service Commission of State of North Dakota and Chamber of Commerce of Fargo, N. Dak., jointly, Wisconsin Manufacturers' Association, Lillian Widmyer, Fred H. Tolin for 230 Pacific Northwest Shippers (sometimes referred to as Tolin Group), Wheat Producers Transportation Committee, Grand Forks, N. Dak., Chamber of Commerce and Red River Valley Potato Growers Association jointly, Livingston Anti-Merger Committee, Spokane Anti-Merger Association, City of Minneapolis, Minn., Cities of Auburn and Sumner, Wash., and Auburn, Wash., Chamber of Commerce jointly, and Seattle Improvement Council.

Fair hearing.

On brief, Minnesota, Oregon, Washington, and Justice separately contend denial of fair hearing. The key arguments will be discussed. At the October 13, 1951, ses-

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Chicago, Rock Island and Pacific Railroad Co. (Rock Island), The Western Pacific Railroad Company (Western Pacific) and The Atchison, Topeka and Santa Fe Railway Co. (Santa Fe).

sion of the hearing, Minnesota and Washington, among others, requested continuance of hearing for cross-examination of applicants' technical witnesses to a date not earlier than May 1, 1962. Oregon concurred. The request was denied, and the date fixed for resumption of hearing on December 5, 1961. Minnesota, Washington and Oregon contend that the seven weeks between October 13 and December 5, 1961, were inadequate to analyze evidence and prepare for cross-examination, and that denial of additional time resulted in limiting the effective use of the right of cross-examination and denial of fair hearing. They argue that applicants had the proposal under consideration since July 1956; that the proposals could not be evaluated without the supporting evidence which applicants introduced at the outset of the hearings October 10-13, 1961, and that the right to a full and fair hearing essential to the legal validity of an administrative determination under authority entrusted by Congress, embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of oppositing parties and meet them, citing *Morgan* v. *U. S.* 304 U. S. 1, (1937). Oregon further argues that no Interstate Commerce Commission staff personnel participated in the proceedings; that any analysis which such Commission staff may undertake to insure coverage of all pertinent issues should be developed on the record so that intervening parties representing local public interest may have the benefit of such analysis in advocating their position, and that absence of such analysis in the record denotes absence of due process. Oregon also argues that it was handicapped by its staff limitations and other commitments of their time and that, to the extent that these limitations were not fully considered in setting hearing dates, it was denied a full and fair hearing. Oregon contends that it was required to present its case in chief prior to intervener Milwaukee, and that in view of its limited available staff and the subsequent presentation by Milwaukee of its six proposed conditions, hereinafter discussed, which "represented an effort on its part to be included in the merger under 49 USCA 5(a) (c)," as well as stipulations entered into of record between appli-

cants and other intervener railroads, it (Oregon) required additional time, which was not given, to fully develop all the important public interest factors which the Commission must consider.

The hearing examiner's ruling on October 13, 1961, setting December 5, 1961, as the date for resumption of hearing for cross-examination of applicants' technical witnesses, was challenged by petitions filed (1) by Minnesota, Washington, Milwaukee and RLEA, which petitions were denied by order of the Commission, vice-Chairman Murphy, entered November 1, 1961, and (2) by Montana, which petition was denied by order of the Commission, Vice-Chairman Murphy, entered November 9, 1961, and affirmed on reconsideration by order of the Commission, Division 3, acting as an appellate division, entered December 1, 1961. The merits of those petitions were considered and disposed of on the dates indicated. Not only was adequate time provided, but the parties contending the action denied them fair hearing were present throughout the 21 days of hearing which followed (December 5, 1961—January 31, 1962, in two sessions) participated fully in cross-examination of applicants' technical witnesses and material covered by applicants' exhibits, and had full access to all supporting data. Their objections renewed on brief are without merit and should be overruled.

The contention that no Commission staff personnel appeared to participate in cross-examination of applicants' witnesses and thereby aid opposition in developing a basis for position is indeed unique and novel. The Commission is under no statutory obligation to have a member of its staff participate in these proceedings. Commission staff personnel do not ordinarily participate in the hearing phase of proceedings such as these except in circumstances involving investigations of violations of the Act, or under some specific direction of the Commission. No investigation of violation is here involved, and the hearing examiner may not speculate as to why the Commission did not direct the Commission's Bureau of Inquiry and Compliance (that arm of the Commission staff which would inquire in public hearings) to partici-

pate in the hearings. These proceedings are not investigative in nature, but involve applications for permissive authority to consummate certain transactions, for which the proponents have the burden of proof. *Cf 5 USC 1006.* Oregon alone has the responsibility of determining what position to take and to produce evidence in support of its position. The Commission does not share this responsibility. Hence, it cannot be validly argued that because Commission staff members did not participate in cross-examination of applicants' witnesses the record is incomplete or that the hearing was not fair. Oregon was competent and able to present, and did present, evidence in opposition. Nonparticipation of Commission staff members did not adversely affect Oregon's responsibility and capability to determine its position, and produce supporting evidence. Its contention is without merit and should be overruled. Compare *Brotherhood of Maintenance of Way Employees, et al.* v. *U. S. et al.* No. 23,467 decided August 13, 1963, U. S. Dist. Court for Eastern Dist. Michigan, Southern Division.

Oregon's contention it was not afforded additional time to present its evidence is contrary to the facts. The record shows that its initial presentation of evidence occurred on March 22, 1962 (the 33rd day of hearing) at Portland, and because at that time intervener Milwaukee had not presented its evidence in support of its proposed conditions, but expected to do so subsequently, Oregon requested additional time, was afforded the time, and presented its additional evidence on May 9, 1962 (the 54th day of hearing) at Chicago. Its contention is without merit. Its reference to Milwaukee's proposed conditions as representing an effort to be "included in the merger" evidences an erroneous interpretation of the statute. Paragraph (d) of section 5(2) of the Act provides:

> "(d). The Commission shall have authority in the case of a proposed transaction under this paragraph (2) involving a railroad or railroads, as a prerequisite to its approval of the proposed transaction, to require, upon equitable terms, the inclusion of another railroad or railroads in the territory involved, *upon petition by such railroad or railroads request-*

ing such inclusion, and upon a finding that such inclusion is consistent with the public interest." (Emphasis supplied).

No petition has been filed by any railroad or railroads herein seeking inclusion.

Minnesota, Washington, and Justice further contend they were denied a fair hearing by reason of errors in admission and exclusion of evidence, by deprivation of full right of cross-examination and imposition of undue restraints on such participation, and denial of adequate time to allow for analysis and preparation for cross-examination of applicants' rebuttal witnesses. Minnesota further contends rulings of the hearing examiner in respect of cross-examination of witnesses of other interveners in opposition (Milwaukee and NP Stockholders Committee), curtailment of cross-examination on applicants' proposed freight schedules and various subjects in the applicants' consultant's report dealing with abandonment of lines, status of subsidiaries, through traffic, employment loss, and organization of the New Company, limitation on cross-examination of witness for intervener in support St. Paul Area Chamber of Commerce, in improperly receiving evidence dealing with testimony of other supporting witness for the same intervener, failure to exclude repetitious and cumulative evidence of applicants' public witnesses, specified rebuttal evidence of applicants and evidence in respect of certain motor carrier subsidiaries of applicants, resulted in its functioning under unwarranted handicaps.

While the record shows concern was evidenced as to the propriety of an intervener in opposition cross-examining other interveners in opposition, it likewise shows that the hearing examiner permitted cross examination of such interveners' witnesses by other interveners in opposition within the purview of their interest in respect of any stated support of the applications and/or conditions proposed. Thus, such witnesses of interveners Milwaukee and NP Stockholders Committee were available for cross-examination and on the occasions in question Minnesota declined to cross-examine.

Minnesota's contention that curtailment of cross-examination of applicants' witnesses on various subjects described presented unwarranted handicaps, is likewise without foundation. Detailed examination of the record discloses active participation and extensive cross-examination by counsel for Minnesota. The record also shows that the contention raised in respect of applicants' proposed freight schedules deals with efforts by Minnesota to interrupt cross-examination of another intervener in opposition witness. Minnesota was not denied cross-examination of the witness for that was not involved. What was involved was counsel's unwarranted interruption of cross-examination by other counsel and the prompt curtailment of such interruption by the hearing examiner in pursuance of the maintenance of good order in the proceedings.

The record shows that in respect of certain recommended abandonments described in applicants' consultant's report and not part of the applications involved, inquiry by Minnesota was, upon objection raised, excluded by the hearing examiner as not properly part of the subject matter before the hearing examiner and beyond the scope of these proceedings. The contentions are without merit, and the rulings of the hearing examiner should be affirmed.

The contentions regarding "rulings" of the hearing examiner on the question of status of subsidiaries and employment loss as cited in brief are without foundation. The record shows in each instance discussion between counsel for Minnesota and the hearing examiner dealing with the proper phrasing of questions propounded, that the questions were rephrased by counsel to permit understanding by the witness and clarity of the record, and were answered by the witness. The record evidences no undue handicaps upon counsel's cross-examination. On similar contentions dealing with Minnesota's inquiry on through traffic and organization of New Company, no citations of record are indicated. On its contention dealing with limitation of cross-examination (which also deals with reception of evidence) of witness for intervener in support St. Paul Area Chamber of Commerce,

the record shows that extensive cross-examination of the witness ensued; that the line of inquiry in question was extensive and exhaustive; that Minnesota by motion sought to have the evidence of intervener St. Paul Area Chamber of Commerce excluded on the grounds that the communities represented were not part of the "jurisdictional area" as defined by its witness, and was overruled by the hearing examiner. The ruling dealing with its pertinence is proper and should be sustained. In respect of the contention the hearing examiner improperly received evidence in support by the same intervener, the record shows that St. Paul Area Chamber of Commerce was a properly recognized intervener in support, having timely filed its petition, which was granted; that its evidence, subsequently discussed, shows its area embraced an extensive trade area beyond the city limits of St. Paul; and that its witnesses from surrounding towns evidenced actions by their respective chambers of commerce which was properly admissible as part of that intervener's case-in-chief, all subject to cross-examination. The ruling should be sustained.

Contentions raised by Minnesota, Washington and Justice that the hearing examiner erred in receiving evidence of applicants, supporting shippers and others which they consider cumulative, are not adequately supported by the record. The record shows that numerous shippers and others testified for applicants or for other interveners, and that they represent a wide and divergent variety of industry and commerce located, or concerned with transportation at, many points in the broad and extensive territory here involved. The record also indicates that all parties presenting public witnesses were aware of, and endeavored to comply with, the Commission's cumulative evidence rule [9] and that few rulings of the hearing

[9] Rule 1.76 of the Commission's General Rules of Practice which provides: Evidence; cumulative restriction. It shall be the duty of the officer before whom any proceeding is being heard to limit the number of witnesses whose testimony may be merely cumulative. And in order to enforce this section, the officer may require a clear statement on the record of the nature of the testimony to be given by any witness proffered.

examiner on that subject were required. At a number of the points where hearings were held throughout the territory involved counsel for Minnesota, Washington and/or Justice indicated a desire to stipulate certain public interest evidence of applicants, but applicants declined. On other occasions when applicants indicated a desire to stipulate certain public interest evidence, the named interveners stipulated, but thereafter declined to further stipulate. Efforts to encourage stipulation by the parties of facts which appeared to the hearing examiner as susceptible of stipulation were only partially successful. However, the question of what is cumulative in connection with shippers representing many varied industries having different transportation problems, throughout an extensive area such as here, and seeking to be heard, is a difficult and sometimes complex judgment question which in all instances must be carefully examined. In proceedings such as these where broad and diverse public interest has been manifested, the Commission, which specifically ordered hearings held at numerous points throughout the territory involved, should not be deprived of proper evidence proffered, even that bearing on what may be considered by some as cumulative. However, that is a judgment question and has been ruled on by the hearing examiner. In all instances, however, the witnesses were available for cross-examination and were cross-examined.

Washington further contends the hearing examiner erred in allowing a witness (Governor Erbe of Iowa) for applicants, over objection (by Milwaukee) to include in his testimony reference to communications received from shippers in Iowa in support of the application (argument also raised by Justice on brief), in rejecting two exhibits (179 and 180) offered by it in respect of a survey conducted by its witness, and in receiving evidence of applicants on rebuttal which it considers improper, in which contentions Justice also concurs on brief.

With respect to the ruling of the hearing examiner permitting the witness for applicant to testify concerning communications received from others, it is significant to note Milwaukee did not pursue its objection on brief,

that Washington did not join in the objection when made, but raises it on brief, and that Justice, which had not yet intervened likewise raises it on brief. Interveners' objection has some merit. Upon further reflection and reconsideration, the hearing examiner believes that the evidence contained in communications from others, who were not available for cross-examination and data therein could not be otherwise verified, should not have been received and will not be considered in arriving at the conclusions herein.

The record shows that the two exhibits offered by Washington, to which reference is made, viz., a statement of its witness dealing with a survey conducted by him and the results of the survey itself—purporting to tell the Commission what other persons told the witness through questionnaires about their views concerning the proposed Milwaukee conditions were rejected by the hearing examiner upon objection. The record also shows that several of those other persons had already testified and had been cross-examined, and that certain supporting data was not made available as it was considered confidential. The Commission has long accepted as sound the general principle that over objection, petitions, letters, affidavits, questionaires, or cumulative data resulting from surveys such as here involved, are inadmissible because of the hearsay character and the inability of opposing parties to cross-examine persons who made statements in such questionnaires. Compare *Somerset Bus Co., Inc. Extension-Somerville-New York*, 43 M.C.C. 543, *Oregon-Nev.-Calif. Fast Freight, Inc. Ext.-San Jose*, 71 M.C.C. 165, *Washington, D. C. Commercial Zone*, 83 M.C.C. 471, and *Regulations for Payment of Rates and Charges*, 310 I.C.C. 391, and the cases therein cited. The ruling of the hearing examiner should be sustained.

Washington and Justice further argue in respect of their contentions that evidence of applicants on rebuttal which they consider improper was admitted over their objection, that failure to sustain objections resulted in the incorporation into the record testimony entirely removed from proper rebuttal, and placed a burden on the opposition, and that having been received, fair hearing

required no less than adequate opportunity to meet it and it was not provided. The record shows and the hearing examiner recognizes that some opinion and argumentative matter was contained in rebuttal, difficult of separation therefrom, but that adequate opportunity was provided to cross-examine rebuttal witness as subsequently discussed. The record shows that counsel for Washington and Justice did not avail itself of opportunity to cross-examine on the rebuttal evidence. Its contentions are without merit.

Justice further contends the hearing examiner "interfered with cross-examination of witnesses by counsel for interveners in opposition and attempted to curtail it for no sound reasons". In an example cited, counsel prefers to quote out of context to give substance to its contention. Justice correctly quotes the question asked on cross-examination of one of applicants' witnesses:

> "Q. Being a one-railroad town like that which I can appreciate, you would be pretty much inclined to go along with just about anything the Northern Pacific proposed to do in the area of merger, wouldn't you?"

Justice states that it was a proper question but that . . . "Yet the examiner interjected, 'Don't be mislead by that question' " ending its reference to quotation from the record. The reference to the statement of the hearing examiner taken wholly out of context warrants exposition. The record shows that objection was raised by counsel for applicants to the question on the grounds it was "argument," to which hearing examiner stated, "I don't think that is argument." Whereupon the question was re-read to the witness at the request of counsel for Justice following which the transcript of testimony (tr. 10384-10385) reflects the following:

> A. Under the present conditions—
>
> Q. (By Mr. Howard) (interrupting) is that right?
>
> Exam. Murphy: Don't be mislead by that question. You are on cross-examination—I am address-

ing this question solely to the witness's demeanor, I want to be sure the witness understands the question—do you fully understand that question?

The Witness: Well, the fact that it is the only railroad in town doesn't influence me, no.

Exam. Murphy: If I understand the question, you don't mean that, Counsel, to indicate that people of Brainerd would be just docile about the thing, do you?

Mr. Howard: Oh, no, I certainly didn't ask that.

The Witness: Could I assert here. I have appeared in opposition—

Exam. Murphy (interrupting): When you used the phrase "one-railroad town", that is the point.

Mr. Howard: I confined it, Mr. Examiner, specifically to the area of merger because they could be doing many things the residents don't like. I think the question says in the area of merger.

Exam. Murphy: All right.

A. We did go on record in favor of merger.

Mr. Howard: I won't pursue that point further. No further questions. Thank you.

The context is thus clear. Other similar circumstances cited warrant the same conclusion. Its contention is without merit.

Contentions by Minnesota, Washington and Justice, that adequate time after receipt of rebuttal evidence to allow for analysis and preparation for cross-examination of applicants' rebuttal witnesses was not afforded and thus deprived them of a fair hearing warrants discussion. The record shows that on June 18-20, 1962, copies of applicants' rebuttal evidence material was distributed to all active parties, including the named contending interveners; that on June 22, 1962, counsel for Washington having examined that material requested additional time (specifically 60 days, which request was joined in by counsel for Minnesota and Justice) within which to further study the data preparatory to cross-examination and that it be provided an opportunity at a later date to cross-examine applicants' rebuttal witnesses; that the hearing examiner reserved ruling on the request until

completion of the scheduled rebuttal (beginning on June 27, 1962, and continuing through June 30, 1962); that applicants' rebuttal witnesses were cross-examined extensively by other interveners, some questions propounded by counsel for Justice, but notations of record made by Minnesota, Washington and Justice to reserve their cross-examination for such subsequent hearing date as may be set by the hearing examiner, which reservations were granted; that upon conclusion by other interveners of cross-examination of rebuttal witnesses (June 30, 1962), the hearing examiner, having reviewed the evidence submitted and the cross-examination of the several witnesses by other interveners, concluded the requested recess of 60 days excessive, and adjourned the hearing to July 10, 1962, for the purpose of providing counsel for Minnesota, Washington and Justice opportunity to cross-examine on applicants' rebuttal evidence; that counsel for Minnesota and Washington, by separate letters dated July 3, 1962, and counsel for Justice, by letter dated July 5, 1962, addressed to the Secretary, Interstate Commerce Commission, indicated that insufficient time had been granted, that they were not and could not be prepared to go forward with cross-examination and, citing Rule 1.4 [10] of the Commissions General Rules of Practice, requested to be excused from attendance and participation at the subsequent hearing session scheduled for July 10, 1962. The request was granted by the Secretary. The hearing session scheduled for July 10, 1962, was held and counsel for Minnesota, Washington and Justice did not appear. The record shows that those counsel, active in the proceedings, had ample opportunity to examine applicants' rebuttal evidence and proceed with cross-examination. They chose not to seek review of the date set by the hearing examiner, but to

[10] Dealing with communications and pleading generally, the pertinent portion of which reads: "(a) How addressed. All communications, including correspondence concerning matters referred to boards, should be addressed to the Commission unless otherwise specifically directed. All communications should clearly designate the docket number, if any, and short title. The person communicating shall state his address, the party he represents, and how response should be sent to him if not by first class mail."

absent themselves from the hearing set primarily to provide them with opportunity to cross-examine applicants' rebuttal witnesses, who were available for such purpose. Interveners' arguments and contentions of denial of fair hearing are without merit and should be denied.

Certain facts regarding the physical composition of the record warrant discussion. The transcript of record totals 15,004 pages, together with 243 exhibits, the efforts of fifty separate and distinct interests represented by 124 counsel or representatives of record during 82 days of hearing. The transcript of record reflects testimony of 623 witnesses of which 328 were applicants' witnesses and 295 were interveners' witnesses. With minor exceptions, those witnesses were vigorously and extensively cross-examined as evidenced by the record, analysis of which reflects the following significant data: Of the total pages of transcript 10,051 pages, or 67 percent of the total pages of transcript were devoted to cross-examination by all parties. Aggregate cross-examination by counsel for Minnesota, Washington and Justice utilized 4,341 pages or 43.2 percent devoted to cross-examination; counsel for Minnesota utilized 2,434 pages, or 27.2 percent of total cross-examination; counsel for Washington utilized 690 pages, or 6.1 percent of total cross-examination; and counsel for Justice utilized 998 pages, or 9.9 percent of total cross-examination. Minnesota participated on all but the 82nd day, and Washington participated on all but the 72nd and 82nd day; and Justice' participation which began on the 30th day, after completion of cross-examination of applicants' technical witnesses, and continued through the 76th day and from the 78th through the 81st day, was, except for presentation of its two witnesses, whose evidence is subsequently discussed, together with filing of brief, directed almost exclusively to cross-examination of shipper and other public witnesses evidencing support of the proposals or conditions requested by other interveners.

THE APPLICANTS

Corporate status, operations and properties.

New Company, a Delaware corporation, was organized January 13, 1961, for the purpose of owning, constructing, and operating a railroad, engaging in transportation of persons and property by railroad and by other modes, and also to engage in all types of businesses and activities to the extent permitted by the laws of Delaware, including the business of acquiring, developing and operating various types of nontransportation properties. Its incorporation was effected to permit it to become the corporate successor of Great Northern, Northern Pacific, Pacific Coast, and Burlington, and lessee of SP&S. It has outstanding 200 shares of common capital stock, without par value, but with a stated value of $5 each, owned in equal proportions by Great Northern and Northern Pacific, issuance of which shares was authorized pursuant to authority granted by order of the Commission, Finance Board No. 2, in Finance Docket No. 21477, *Great Northern Pacific & Burlington Lines, Inc. Stock*, I.C.C. , (not printed in full), decided March 19, 1961. Those shares were authorized and issued solely to enable New Company to have stockholders capable of assenting to the proposed transactions for which authority is here sought. Upon consummation of the first of the merger transactions for which authority is sought (the Northern Lines merger) as subsequently discussed, and concurrently therewith, the certificate of incorporation of New Company would be amended so that, among other things, the authorized capital stock of New Company would be reclassified and increased to 3,102,233 shares of preferred stock, par value $10 each, and 17,500,000 shares of common capital stock, without par value, whereupon the original 200 shares above described would be retired and cancelled. Upon accomplishment of the transactions for which authority is here sought, New Company would not be controlled by any corporation, individual or trustee.

New Company has no assets other than its initial capital of $1,000. It is not a carrier, owns no property

and is not presently engaged in any operations. Upon consummation of the first of the transactions for which authority is here sought, i. e., the Northern Lines merger, it would succeed to the properties and assets of Great Northern, Northern Pacific, and Pacific Coast, and become a carrier in its own right. Subsequent transactions herein involve merger into New Company of the properties and assets of Burlington, and lease of the properties and assets of SP&S, and upon consummation of all of the transactions New Company would operate those properties principally as a common carrier by railroad subject to Part I of the Act.

Great Northern, a Minnesota corporation, was organized originally under the territorial laws of Minnesota on March 1, 1856, as Minneapolis and Saint Cloud Railroad Company. The name of the corporation was changed to its present name on September 18, 1889. The authorized capital stock of Great Northern is 7,500,000 shares of common capital stock, without par value. As of August 31, 1961, it had outstanding 6,073,135 shares. However, as of December 31, 1961, it has issued 6,208,957 shares, of which 6,075,269 shares were outstanding and owned by approximately 41,000 shareholders, 133,647 shares of which were held in treasury (including 109,265 shares reserved for purpose of satisfying restricted stock options granted from time to time to officers and key employees at prices ranging from $24 to $58 per share), and 41 shares were reserved for conversion of outstanding factional scrip. It is not controlled by any other corporation or company.

Great Northern's long-term debt as of August 31, 1961, consisted of bonds aggregating $178,662,900, equipment obligations aggregating $66,059,954, including $7,916,318 due within one year, and miscellaneous obligations $20,552, including $10,276 due within one year. As of December 31, 1961, its long-term debt consisted of bonds aggregating $178,662,900, equipment obligations aggregating $63,736,230, including $8,619,594 due within one year, and miscellaneous obligations $20,552, including $10,276 due within one year. Details respecting the various obligations comprising such debt is described elsewhere herein.

Great Northern has conducted operations under its present name since 1889 as a common carrier by railroad and such operations were conducted by predecessors under different names continuously since 1862. Its railroad operations as of December 31, 1960, comprised 8,277.69 miles of road, of which 4,355.36 were main line (4,261.69 owned and 104.67 trackage rights) and 3,613.33 were branch line (3,507.02 owned and 106.31 trackage rights) and are subject to Part I of the Act. Of its owned main line trackage, 34.78 miles are jointly owned with various railroads and .08 mile operated under lease from another railroad. Of its owned branch line, 99.2 miles are jointly owned with various railroad companies. It owns but does not operate 0.26 mile of railroad leased to other railroad companies. Its principal main lines of railroad through 10 states [11] and two Canadian provinces,[12] extend from Duluth, Minneapolis, and St. Paul, Minn., Superior, Wis., and Sioux City, Iowa, westerly to Seattle, Wash., and other western cities, including Vancouver, B. C., and Portland, Oreg., via Willmar, Minn., and Garretson, S. Dak., via St. Cloud, Minn., Fargo, Casselton and Grand Forks, N. Dak., Havre and Shelby, Mont., Sandpoint, Idaho, and Spokane, Wash. Other lines connecting with the principal lines serve the Mesabi Iron Range in northern Minnesota, and Great Falls, Butte and Billings, Mont. Its principal branch line mileage is in Minnesota and North Dakota. A line also extends southerly through central Oregon to Bieber, Calif., over a portion of which between Chemult and Klamath Falls, Oreg., it operates over the tracks of Southern Pacific under a contract expiring in the year 2027, approved in Finance Docket No. 4730. Through an affiliate, The Midland Railway Company of Manitoba, hereinafter called Midland, Great Northern also reaches Winnipeg, Manitoba. Its principal points of interchange with other railroads include, in addition to the terminal points first mentioned, the points of Laurel, Billings,

[11] Wisconsin, Minnesota, North Dakota, South Dakota, Iowa, Montana, Idaho, Washington, Oregon, and California.

[12] Manitoba and British Columbia.

Butte, and Sweetgrass, Mont., Spokane, Chemult, and Noyes, Minn., Northgate, N. Dak., New Westminster, B. C., and Winnipeg.

Great Northern has been fully dieselized since 1958, and as of August 31, 1961, owned 647 diesel units of locomotive, 596 passenger train cars, and 40,635 freight train cars, and leased or otherwise controlled 347 other units. As of December 1, 1961, however, it owned, leased or controlled 47,146 units of freight car equipment, of which 5,837 were refrigerator cars including 360 owned by Western Fruit Express, a wholly-owned subsidiary, 22,193 were box cars, including 5,475 double-door cars and 396 damage-free insulated box cars.

In addition to the above-described transportation properties Great Northern holds property rights in the nature of trackage rights to operate over the lines or portions of the lines of other railroads and in some instances to utilize jointly with others described terminal or passenger station facilities covered by currently effective agreements, the nature and other vital statistics of which are set forth in appendix D.

Great Northern also conducts operations as a common carrier by motor vehicle, subject to Part II of the Act. Under effective certificates issued in No. MC-28572 (Sub-No. 3), and various other related sub-numbered proceedings, it engages in the transportation of passengers and their baggage and mail, newspapers, and express in the same vehicle with passengers, between Whitefish and Kalispell, Mont.; between Great Falls and Havre; and between Williston, N. Dak., and Scobey, Mont. Such operations as are authorized are restricted to service at stations on the railroad. Under effective certificates issued in No. MC-28573 and various related sub-numbered proceedings it engages in the transportation of general commodities between specified points in Minnesota, North Dakota, Montana, and Oregon. Such operations are generally confined to those between points which are stations along the railroad described as "key points", although some are off-line, and the operations carry the usual restrictions including those limiting service to that auxiliary to or supplemental of rail service of the Great Northern, such traffic moving under rail billing.

The measure of control or ownership exercised by Great Northern over such other carriers, terminal and other railroad service companies, and other significant companies is shown in summary form in appendix E hereto. A description of certain of the various companies in which Great Northern has and New Company would acquire proprietary interest is appropriate.

Through 100 percent stock ownership, Great Northern controls the following carriers subject to the Act: (1) Great Northern Pipe Line Company (Pipe Line), (2) Superior & Duluth Transfer Company (S&DT), and (3) Pacific Coast, an applicant herein.

Pipe Line, a North Dakota corporation, has been engaged as a pipeline common carrier, operating a crude oil pipe line wholly in North Dakota, extending from the Newburg, Wiley and Glenburn fields to terminal and tank-car loading facilities on the main line of Great Northern east of Minot, N. Dak., 49.5 miles. Portal Pipe Line Company (Portal), a Delaware corporation, was organized to construct and operate a common carrier pipe line approximately 350 miles long for the transportation of crude oil from Minot and other points in the area to Clearbrook, Minn. Great Northern, a subscriber of 45 percent of the capital stock of Portal has entered into agreement with the latter whereby Portal would acquire and operate all the properties of Pipe Line, the manner of such acquisition to be determined.

S&DT, a Wisconsin corporation, acquired by Great Northern pursuant to authority granted in No. MC-F-7052, *Great Northern Ry. Co.—Control—Superior & D. Transfer*, 85 M.C.C. 401, decided February 1, 1961, conducts motor carrier operations in interstate or foreign commerce, in a pick-up and delivery service for Great Northern freight as well as freight for other railroads, pursuant to superseding certificates issued in No. MC-1066, on April 21, 1961, authorizing operations between Duluth and Superior, which operations carry the usual restrictions limiting service to that which is auxiliary to or supplemental of rail service. It also operates a retail coal business, storage warehouse, and acts as agent for national furniture movers.

Pacific Coast, an applicant, was acquired by Great Northern on August 31, 1951. Its corporate status, operations and properties, as well as contemplated action with respect to its corporate identity and properties, are described elsewhere herein.

Great Northern owns and controls jointly with Northern Pacific, the following carriers subject to the Act: (1) Burlington, an applicant, in which Great Northern holds 830,179 shares or 48.5 percent of the outstanding stocks, of which 842 shares are owned of record by Great Northern and the remaining 829,337 shares are pledged with the trustee under Great Northern's general gold bond mortgage, and (2) SP&S, also an applicant in which Great Northern is beneficial owner of, and entitled to exercise voting rights on, 200,000 shares, or 50 percent of the outstanding common stock, and the owner of 50 percent of the outstanding first mortgage bonds of SP&S. The corporate status, operations and properties of each of those carriers are described elsewhere herein.

Great Northern owns jointly with Southern Pacific the Oregon, California & Eastern Railway Company (OC&E), a Nevada corporation, that owns and operates a line of railroad extending between Klamath Falls and Bly, Oreg., 64.04 miles, and is engaged primarily in logging. It is operated independently, the proprietary lines dividing the profits or losses equally.

In addition to those carriers subject to the Act, Great Northern also owns jointly with Northern Pacific, in equal proportions, the capital stock of Midland, a Canadian railroad not subject to the Act. Midland, organized by its current owners in 1905 pursuant to an act of the Legislative Assembly of Manitoba passed in 1903, is utilized by its owners to enable each of them to obtain access to Winnipeg. It owns 14.5 miles of terminal tracks in Winnipeg and has trackage rights over the lines of Canadian National Railway from the International Boundary near Pembina, N. Dak., and from Emberson Junction, Manitoba, to Winnipeg. It owns a small amount of rolling stock, and its operations are conducted under a long time agreement with and between Great Northern

and Northern Pacific which provides for consolidation between the International Boundary and Winnipeg of the freight trains of each and furnishing by each on an equalization of mileage basis of the locomotive and cabooses for that service and operation by each company of its own passenger trains through to the Winnipeg terminals with its own crews, carrying the crews on its own payrolls and paying all expenses connected with such train service direct. Each parent company retains its own earnings, including portions thereof north of the boundary. Other expenses of Midland are paid directly by Great Northern and Northern Pacific in agreed proportions. Earnings accruing to each of the parent lines and expenses paid by each are absorbed into the accounts of each parent line and are included in revenues and expenses reported by each to this Commission.

As indicated in appendix E, Great Northern holds minority interests in the capital stocks of a number of other carriers subject to the Act. The principal ones which warrant description are The Lake Superior Terminal & Transfer Railway Company (LST&T), The Minnesota Transfer Railway Company (Minnesota Transfer), and The Saint Paul Union Depot Company (St. Paul Depot).

LST&T, the capital stock of which is owned 33⅓ percent each by Great Northern and Northern Pacific, and 16⅔ percent each by C&NW and Soo, owns and operates terminal facilities at Superior, Wis., and performs transfer and terminal switching services for each of its four proprietary lines. Each one-sixth share of ownership is entitled to one vote and elects one of six directors. Other than transfer to New Company of Great Northern and Northern Pacific's above described stock ownership, few changes are contemplated in the event of approval herein. After merger, New Company would elect four directors. Since under LST&T's by-laws, five votes are required to approve any corporate action, either Great Northern or Northern Pacific now has veto power which New Company would possess; similarly C&NW and Soo together would retain their veto power following consummation if approved. Operating expenses of LST&T are

allocated on a use basis. Following consummation Great Northern cars moving to and from industries served by Northern Pacific and Northern Pacific cars moving to and from industries served by Great Northern, now transferred between the two companies by LST&T would be handled entirely by New Company. In addition, because of elimination of separate billing, there would be reduction in accounting work eliminating three employees.

Minnesota Transfer, the capital stock of which is owned by eight railroads (including Great Northern, Northern Pacific, and Burlington, each of which owns a one-ninth interest, except C&NW which owns a two-ninths interest as result of its recent acquisition of Minneapolis & St. Louis Railroad), owns and operates terminal facilities at Twin Cities and performs transfer and terminal switching services for its proprietary lines. With respect to allocation of expenses among the proprietary lines, a controversy is now pending before the courts in respect of proper division of expenses as a result of acquisition above described. Neither Great Northern, Northern Pacific nor Burlington uses the facilities in making interchanges with each other, but Great Northern and Northern Pacific use its services for interchange with the Milwaukee and another railroad and any change in method of making interchange with those companies would be a matter of negotiation between them and New Company.

St. Paul Depot, the capital stock of which is owned in equal proportions by eight proprietary lines, including Great Northern, Northern Pacific, and Burlington, owns and operates the Union Passenger Station and related facilities in St. Paul, which are used by its proprietary lines. Operating expenses are allocated on a use basis, and changes in allocation require unanimous agreement of the owning companies. In the event of approval herein, following consummation and consolidation of passenger trains between St. Paul and Chicago, there would be a reduction in the number of cars handled through its facilities. However, employees would not be affected, and its operations and relations would otherwise remain unchanged.

In addition to its transportation properties and other investments, which includes 100 percent stock ownership in Western Fruit Express Company, which owns over 5,800 refrigerator cars and which furnish refrigerator car service to Great Northern and certain other railroads, Great Northern's interest in non-transportation properties is evidenced in its wholly-owned subsidiary, Glacier Park Company, which in addition to owning 175,000 shares (9.6 percent of the capital stock of Western Pacific, previously described, and 20,264 shares (2.3 percent) of the capital stock of Puget Sound Pulp & Timber Company, also owns approximately 152,000 acres of timber and timber growing lands in the Kalispell area of Montana, and mineral rights in 8,700 acres now under lease to a major oil company, in the Waterton Lake area of southern Alberta. The record contains no separate valuations of those properties that is identifiable.

Northern Pacific, a Wisconsin corporation, was organized March 15, 1870, as the Superior and St. Croix Railroad Company. The name of the corporation was changed to its present name on July 10, 1896. On September 1, 1896, it acquired the railroad and land grant of Northern Pacific Railroad Company, a Federal corporation. The authorized capital stock of Northern Pacific is 7,500,000 shares of common stock, par value $5 each. As of August 31, 1961, it had outstanding 5,993,684 shares. However, as of December 31, 1961, it had issued 5,997,577 shares, of which 5,993,276 were outstanding, owned by approximately 32,000 stockholders, and 4,301 were held in treasury, including 28 shares reserved for conversion of outstanding fractional scrip. It is not controlled by any other corporation or company.

Northern Pacific's long-term debt as of August 31, 1961, consisted of bonds aggregating $209,341,200, and equipment obligations $90,168,857, including $10,207,107 due within one year, and miscellaneous obligations $284,510, including $50,853 due within one year. As of December 31, 1961, its long-term debt consisted of bonds aggregating $208,917,200, and equipment obligations $88,056,694. Details respecting the various obligations comprising such debt are described elsewhere herein.

Northern Pacific has conducted operations under its present name continuously since 1896, as a common carrier by railroad, and such operations were conducted by its predecessor theretofore since 1872. Its railroad operations as of December 31, 1960, comprised 6,800.31 miles of road, of which 2,784.30 were main line (2,714.89 owned including 6.36 miles jointly with other rail carriers, 17.40 were trackage rights, and 53.01 were operated under lease), and 4,016.01 miles were branch line (3,718.42 owned, including 35.75 jointly with other rail carriers, 249.19 were trackage rights, and 48.40 operated under lease from the United States Government) and are subject to Part I of the Act. It owns but does not operate 35.49 miles leased to SP&S. Its principal main lines of railroad through seven states [13] and the Canadian Province of Manitoba, extend from St. Paul and Minneapolis, and from Superior and Ashland, Wis., and Duluth, westerly via Fargo and Bismarck, N. Dak., Billings, Butte and Helena, Mont., Spokane, Seattle and Tacoma, Wash., and Portland. Branch lines connecting with the principal main lines serve the agricultural and lumber producing territories which are intermediate, and a line extending to a connection with its affiliate, Midland, at Pembina, N. Dak., and International Falls, Minn., enables it to serve Winnipeg. Its principal points of interchange are at St. Paul, Duluth, Ashland, Superior, Laurel, Billings, Butte, Spokane, Seattle, Pasco and Portland. Internationally, the principal points of interchange with other carriers by railroad are at Sumas, Wash., Pembina, and Winnipeg.

As of August 31, 1961, Northern Pacific owned 627 diesel units of locomotive, 34,394 freight train cars and 402 passenger train cars and leased 300 freight train cars and four passenger train cars from others. As of December 1, 1961, however, it owned, leased, or controlled 34,715 units of freight car equipment, of which 1,404 were refrigerator cars, 19,051 were box cars, including 4,678 double-door cars, and 747 damage-free insulated box cars.

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[13] Wisconsin, Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon.

In addition to the above-described transportation properties, Northern Pacific holds property rights in the nature of trackage rights to operate over the line or portions of the lines of other railroads and in some instances utilizes jointly with others described terminal or passenger station facilities covered by currently effective agreements, the nature of which, and other vital statistics of which are set forth in appendix D.

The measure of control or ownership exercised by Northern Pacific over such other carriers, terminal and other railroad service companies, and other significant companies is also shown in summary form in appendix E hereto. A description of certain of the various companies in which Northern Pacific has, and New Company would acquire, a proprietary interest is appropriate.

Through 100 percent stock ownership, Northern Pacific controls the following carriers subject to the Act: (1) Walla Walla Valley Railway Company (Valley Railway), (2) The Duluth Union Depot and Transfer Company (Duluth Union Depot), and (3) Northern Pacific Transport (NP Transport). Valley Railway, an Oregon corporation, organized April 30, 1910, as an interurban railroad, independently operates a line of railroad consisting of 13.99 miles of main line and 5.16 miles of branch line between Walla Walla and Baker-Langdon, Wash., and Milton-Freewater, Oreg. All of its capital stock was acquired in 1921 by a former wholly-owned subsidiary, since liquidated, and acquired by Northern Pacific pursuant to authority granted in Finance Docket No. 19663, *Walla Walla Valley Railway Company Control*, 295 I.C.C. 826, decided March 11, 1957. It serves principally as an originator of traffic for Northern Pacific.

Duluth Union Depot, a Minnesota Corporation, organized March 12, 1889, owns and operates a passenger station, 2.86 miles of terminal trackage and one diesel electric switching locomotive in Duluth, Minn. Great Northern, Northern Pacific, and Duluth, Missabe and Iron Range Company (DMI) are tenant lines utilizing its facilities.

NP Transport, a Delaware corporation, organized September 5, 1929, operates as a common carrier by motor vehicle, in interstate or foreign commerce (a) pursuant to effective certificates issued in No. MC-84690 and various sub-numbered proceedings, in the transportation of passengers and their baggage, and express, newspapers and mail in the same vehicle with passengers, over regular routes, generally between Billings, on the east, and Spokane, on the west, via Laurel, Livingston, Helena, Butte, and Missoula, also to Glacier National Park, via Livingston and Helena, Gardner, via Red Lodge, Mont., and between Missoula and Darby, Mont., and (b) pursuant to effective certificates issued in No. MC-63562, and various sub-numbered proceedings, in the transportation of general commodities, principally over regular routes, generally between Glendive and Sidney, Mont., on the east, and Portland, Oreg., and South Bend, Moclips, Bremerton, Everett, and Bellingham, Wash., on the west via Laurel (and south to Bridger, Mont.), Logan, Helena, Butte, Missoula, and Kailespell, Mon., Spokane, Pasco, Lewiston, Seattle, Tacoma, and Sumas, Wash., generally along the rail lines of the railroad, most of which operations are subject to key point and prior or subsequent rail haul restrictions. Some of its operations were authorized by certificates recognizing certain "grandfather" rights, and are unrestricted. It also performs pick-up and deliver service in the transportation of general commodities for Northern Pacific at points in Minnesota, North Dakota, Montana, Idaho, Washington, and Oregon. As of December 31, 1961, it utilized in its operations 808 pieces of equipment consisting of 90 trucks, 127 truck tractors, 529 semitrailers, 2 poletrailers, 20 passenger busses, 11 bus-truck combinations, and a limousine for special charter parties. It also owned 340 semitrailers leased to Northern Pacific for trailer on flat car (TOFC) service.

Northern Pacific also controls, jointly with Great Northern, applicants Burlington and SP&S, as well as Midland described elsewhere herein. It owns 830,179 shares, or 48.59 percent of the outstanding common stock of Burlington of which 842 shares are owned of

record and the remaining 829,337 shares are pledged with the trustee under Northern Pacific refunding and improvement mortgage, described elsewhere herein.

Northern Pacific owns jointly with Union Pacific in equal proportions the capital stock of Camas Prairie Railroad Company (Camas Prairie), a carrier subject to the Act which operates independently a line of railroad, 257.77 miles, extending between Riparia, Wash., and Grangeville, Oreg., via Lewiston, Idaho, and between Lewiston and Stites and Headquarters, Idaho. It has connections with each of its proprietary lines, and serves principally as an originator of traffic for them.

As indicated in appendix E, Northern Pacific holds minority interests in the capital stock of a number of other carriers subject to the Act. The principal ones which warrant description are: (1) The Northern Pacific Terminal Company of Oregon (NP Terminal), (2) LST&T, (3) St. Paul Depot, (4) Minnesota Transfer, and (5) Butte Pipe Line Company (Butte Pipe). The operations of LST&T, St. Paul Depot, and Minnesota Transfer have been described elsewhere herein.

NP Terminal, the capital stock of which is owned 40 percent each by Northern Pacific and Union Pacific, and 20 percent by Soutern Pacific, owns and operates extensive terminal facilities in and around Portland, Oreg., performs switching service, including to and from industries on its own lines, and transfer work for the proprietary lines and SP&S, and owns and operates the Union Depot and related facilities, performing passenger terminal services for proprietary lines, Great Northern and SP&S. It owns a small yard in which are handled Northern Pacific's freight trains, and operates the Guild's Lake Yard owned 75 percent by the terminal company and 25 percent by Great Northern, but used in varying degrees by Northern Pacific, Union Pacific, Southern Pacific and Great Northern. Other than transfer to New Company of Northern Pacific's above-described stock ownership, in event of approval, few changes in operations would occur. Those include performance on an ownership basis rather than on a tenant line basis of passenger work now performed for Great Northern and

SP&S at Union Depot, reduction in some accounting work performed by the terminal company due to elimination of some billing. It is not anticipated that such changes would affect employees. Freight work performed for Great Northern at Guild's Lake Yard now on an ownership basis would not be affected. In addition, it is proposed that what are now SP&S freight trains would use Guild's Lake Yard to which would also be transferred work presently performed for Great Northern and SP&S in its Hoyt Street Yard. It is anticipated that increase in activity at Guild's Lake Yard would exceed decrease attributable to New Company's preferential solicitation for inside gateways of Klamath Falls and Bieber as against Portland, subsequently discussed, and that the terminal company may increase the number of employees, but its cost would be offset by increased use charges paid to it by New Company.

Butte Pipe, in which Northern Pacific owns 10 percent of its capital stock, operates as a common carrier by pipe line with 510.373 miles of line in eastern Montana and Wyoming.

In addition to its transportation properties and other investments, which include 100 percent stock ownership of Cuyuna Realty Company, Lemhi Telephone Company, and Missabe Realty Company, not engaged in transportation, Northern Pacific has large land holdings which are important sources of income to it. Most of the lands were part of the land grant made by the Act of Congress of July 2, 1864, incorporating the Northern Pacific Railroad Company and granting lands to induce construction of its railroad from a point on Lake Superior to Puget Sound by the northern route, so as to bring about settlement and development of that region, add value to the government lands therein and establish facilities for the transportation of mails, troops, munitions and public stores to and from the west coast. To aid in the construction 39,473,369 acres of alternate, odd-numbered sections of non-mineral public lands were granted by the original grant together with a right of way of 200 feet on either side of the railroad where it passed through the public domain together with necessary lands for station buildings, shops and other appur-

tenances. The rights to them were acquired by Northern Pacific at foreclosure and sequestration sales following foreclosure in 1896 of mortgages placed on the railroad and land grant by the federal corporation.

Since the original grant of lands described, Northern Pacific has disposed of considerable acreage by sale over the intervening years. Of the sale of lands since acquisition under the grant, the record shows that the proceeds, net after payment of expenses and taxes paid into the hands of the trustee of the Northern Pacific prior lien mortgage, aggregated approximately $110,000,000.

As of December 31, 1960, Northern Pacific and its wholly-owned non-carrier subsidiaries together owned in fee 2,236,992 acres of land (with the exception of certain minerals in 23,177 acres) in Wisconsin, Minnesota, North Dakota, Montana, Wyoming, Idaho, Washington and Oregon; surface only of an additional 1,937 acres of land in Minnesota, Montana, and Washington; and certain mineral rights in an additional 6,075,659 acres of land in the eight states above mentioned, including 5,067,000 acres on which all mineral rights, including oil and gas rights are owned, 999,277 acres on which oil, coal and iron rights are owned, and 9,270 acres on which only coal rights are owned. Although huge, the lands described comprise but a small part of the original land grant lands owned in fee. However, the present holdings of Northern Pacific of such properties are unique as a lands holding. If owned in a separate corporate entity, it would probably represent one of the largest and most diversified land companies within the United States. The increasing importance of the properties to Northern Pacific stockholders is prompted by a comparison of earning from such properties in relation to its net income from all sources. By 1961, Northern Pacific's net income of $5,913,216 from the natural resources properties, without certain deductions, was more than one-third of the total net income of $16,313,322 as shown in its annual report to stockholders for 1961, an exhibit of record. Of the lands owned in fee, approximately 1,360,000 acres are timber and timber growing lands located in Washington, Oregon, Idaho, Montana,

and Minnesota. While Northern Pacific manages its own timber lands, it does not engage in logging or other lumber operations. Such operations are carried out by other companies to whom Northern Pacific has granted cutting rights. Of those lands, Northern Pacific owns in fee, or owns oil and gas rights in, approximately 4,460,000 acres are in North Dakota, Montana and Wyoming, in portions of which oil and gas production have been developed, and approximately 980,000 acres in areas in which no production has yet been developed in Montana, Washington and Oregon.

Northern Pacific does not itself engage in exploration for, development or production of oil or gas. Its oil and gas properties are generally developed through contracts with operating oil companies, which contracts provide for royalties to Northern Pacific and either for exploratory drilling by the operator or for cash bonuses. In some cases Northern Pacific shares in a portion of the working interest production and costs. As of December 31, 1960, 357,000 acres of Northern Pacific's ownership were committed to leases or agreements. Oil and gas were being produced on approximately 49,500 of such acres and Northern Pacific shared in the production of oil and gas from approximately 75,000 additional acres under unitization or pooling agreements.

Average daily rate of Northern Pacific's net oil production for the period 1951 through 1960, inclusive, together with the number of wells in which as of the end of each year Northern Pacific shared in the production, is shown of record, as follows:

		Bbls of oil per day		
Year	Wells	Working Interest	Royalty interest	Total
1951	229	0	840	840
1952	247	0	932	932
1953	294	45	1,189	1,234
1954	324	236	1,386	1,622
1955	384	608	1,602	2,210
1956	458	1,611	2,292	3,903
1957	514	3,572	2,991	6,563
1958	578	4,297	3,131	7,428
1959	606	4,488	3,210	7,698
1960	664	4,652	3,368	8,020

On December 31, 1960, Northern Pacific had estimated net proved developed oil reserves of 18,051,000 barrels (9,805,000 working interest and 8,246,000 royalty) and estimated recoverable net proved developed gas reserves of 6,290,000 mcf.

Northern Pacific holds extensive acreages of coal lands, principally lignite, and also holds other mineral properties, including several with iron deposits, which lands and properties are not considered by it to be of significant proportions in relation to its total assets, principally because the total net income from such mining properties has been nominal and no substantial improvement is anticipated.

Gross revenues from timber, oil and gas and other minerals for the ten year period 1951 through 1960, inclusive, is shown of record, as follows:

Year	Timber	Oil and Gas	Other Minerals	Total
1951	$ 677,224	$ 695,520	$ 551,890	$ 1,924,634
1952	851,253	851,253	511,449	2,144,076
1953	615,771	987,017	599,160	2,201,948
1954	1,023,063	1,327,019	1,023,711	3,373,793
1955	1,400,000	1,686,153	1,001,885	4,088,038
1956	1,914,538	3,209,362	1,224,277	6,348,177
1957	1,343,951	6,004,294	1,326,927	8,675,172
1958	2,036,313	7,074,439	752,639	9,863,391
1959	3,950,927	7,618,894	519,881	12,089,702
1960	3,584,685	7,387,183	517,457	11,489,325

Northern Pacific represents that net income from timber, oil and gas, and other minerals cannot be accurately stated for the reasons that, with the exception of oil and gas, separate accounting records are not maintained for these activities; that the expense records maintained for oil and gas do not include any allocation of interest on funded debt, real property taxes, pension or overhead costs; and that the accounting records maintained for timber and mineral properties, while adequate for management purposes, are not kept in the same detail as for oil and gas operations, but are partly estimated and, as in the case of oil and gas, does not include

expenses of the character referred to above. Its estimate of net income from those sources, after income taxes for the 5-year period 1956-1960, inclusive, without taking into account the expenses mentioned above, is shown as follows:

Year	Timber	Oil and Gas	Other Minerals	Total
1956	$1,183,141	$1,481,226	$724,332	$3,388,699
1957	733,911	2,561,010	809,173	4,104,094
1958	1,246,185	3,095,478	424,617	4,766,280
1959	2,670,577	3,814,752	249,116	6,734,445
1960	2,386,843	3,552,375	241,264	6,180,482

Burlington, an Illinois corporation, was organized June 24, 1864, through the consolidation of two corporations, one of which had been incorporated in 1849 as the Aurora Branch Railroad Company. It has only one class of capital stock outstanding, consisting of common capital stock, par value $100 each. As of December 31, 1960, it had outstanding 1,708,391 shares, of which all but four shares, reserved for conversion of outstanding factional scrip, were owned by approximately 643 stockholders, 641 of which held 48,033 shares. As of December 31, 1961, no significant change in outstanding shares had occurred. Of its outstanding capital stock, 97.18 percent are owned in equal proportions by Great Northern and Northern Pacific, each of which owns beneficially 830,179 shares. Those shares were acquired through purchase in 1901 to assure Burlington a permanent connection by its short line with the Northwest rich in minerals and lumber, with its markets for agriculture and other products, and with the commerce of the Pacific Ocean by way of Puget Sound and the Columbia River, while the Northern Lines were assured of a permanent connection by the shortest line with the agricultural and manufacturing areas of the middlewest and its markets for the products of the north and commerce of the Pacific northwest. Of those shares, 842 each are owned of record by Great Northern and Northern Pacific, respectively, and 829,337 shares are pledged with The First National City Bank of New York, trustee under Great

Northern Railway Company general gold bond mortgage, and 829,337 shares are pledged with Guaranty Trust Company of New York, trustee under Northern Pacific Railway Company refunding and improvement mortgage. The remaining 48,033 shares, or 2.82 percent, are publicly held.

Burlington's long-term debt as of August 31, 1961, consisted of bonds aggregating $128,723,000, and equipment obligations $93,604,604, including $11,977,372 due within one year. As of December 31, 1961, its long-term debt consisted of bonds aggregating $127,932,000, and equipment obligations aggregating $92,811,480, including $12,631,662 due within one year. Details respecting the various obligations comprising such debt are described elsewhere herein.

Burlington has conducted operations as a common carrier by railroad since 1864. Its present railroad operations comprise 8,648.31 miles of road, of which 5,111.86 are main line (4,645.22 are owned, including 2.87 miles jointly with other carriers, 435.72 are trackage rights and 30.92 are operated under lease), and 3,536.45 are branch line (3,401.95 are owned and 134.50 are trackage rights), and are subject to Part I of the Act. Its principal main lines of railroad through 11 states [14] extend from Chicago, Ill., northwesterly to St. Paul and Minneapolis, and from Chicago westerly and southwesterly to St. Louis and Kansas City, Mo., Omaha and Lincoln, Nebr., Denver, Colo., and Billings and Huntley, Mont. Connecting main lines extend to Peoria and Rockford, Ill., Des Moines and Sioux City, Iowa, Deadwood, S. Dak., and via the line of a subsidiary (Paducah & Illinois Railroad Company) to Paducah, Ky. It maintains an extensive branch line system, principally for grain in Nebraska and Kansas. Its principal points of interchange are at Chicago, Peoria, and East St. Louis, Ill., St. Joseph, Kansas City and St. Louis, Mo., Omaha and Grand Island, Nebr., Council Bluffs and Sioux City, Iowa, St. Paul, Minneapolis, Denver, Billings, Laurel and Paducah.

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[14] Illinois, Iowa, Kansas, Colorado, Minnesota, Missouri, Montana, Nebraska, South Dakota, Wisconsin, and Wyoming.

Burlington's regular operations have been dieselized since 1957 and most of its operations were conducted with diesels for many years prior thereto. As of December 31, 1960, it owned 692 diesel units and 13 steam units of locomotive, 1,024 passenger train cars, of which 79 were leased to others, and 43,509 freight train cars. However, as of December 1, 1961, it owned, leased, or controlled 48,998 units of freight train cars, of which 22,306 were box cars, including 760 double door cars and 549 damage free insulated box cars, and 1,963 were refrigerator cars owned by its wholly owned subsidiary, Burlington Refrigerator Express.

Burlington also conducts operations as a common carrier by motor vehicle subject to Part II of the Act. Under effective certificates issued in No. MC-66580 and sub-numbered proceedings engages in the transportation of passengers and their baggage, and express, newspapers and mail, in the same vehicle with passengers, over regular routes between Miner, Wis., and Winona, Minn., serving no intermediate points, and between Atchison, Kans., and Armour, Mo. Under effective certificates issued in No. MC-66581 and various sub-numbered proceedings, it engages in the transportation over regular routes of general commodities, with exceptions between Sterling and Merino, Colo., serving all intermediate points, with restriction; of baggage, express, mail, newspapers, milk and cream between Alliance, Nebr., and Torrington, Wyo., and between Bayard, Nebr., and junction U. S. Highways 26 and 26N, serving all intermediate points, with restrictions; of milk and cream and by-products thereof between Atchison, Kans., and Armour, Mo.; of general commodities between St. Louis, Mo., and Alton, Ill., serving East Alton, Ill., subject to restrictions; of general commodities, moving in express service between Dubuque, Iowa and Savanna, Ill., serving no intermediate points, with restrictions; and of baggage and express between Rock Island and Savanna, Ill., serving specified intermediate points. The restrictions indicated are generally those limiting service to that which is auxiliary to or supplemental of rail service, such operations generally being confined to those between points stations along the railroad, although some are off-line.

In addition to the above-described transportation properties, Burlington holds property rights in the nature of trackage rights to operate over the lines or segments of lines of other railroads, and in some instances utilizes jointly with others described terminal or passenger station facilities, covered by currently effective agreements, the nature of which, and other vital statistics of which, are set forth in appendix D.

The measure of control or ownership exercised by Burlington over such other carriers, terminal and other railroad service companies, and other significant companies is also shown in summary form in appendix E hereto. A description of certain of the various companies in which Burlington has and New Company would acquire a proprietary interest is appropriate.

Those carriers subject to the Act wholly owned or controlled through ownership of a majority of outstanding capital stock by Burlington are: (1) Burlington Truck Lines, Inc. (BTL), (2) Missouri and Illinois Bridge and Belt Railway Company (Belt Railway), (3) The Colorado and Southern Railway Company (C&S), (4) Fort Worth and Denver Railway Company (FW&D), and (5) Winona Bridge Railway Company (Winona Railway). BTL, an Illinois corporation, wholly owned by Burlington, was organized June 14, 1945, to succeed to the freight operations of Burlington Transportation Company, which had been conducted since 1935, operates pursuant to certificates issued by this Commission in No. MC-107500 and various sub-numbered proceedings, as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, for the most part, with certain exceptions, generally over a network of regular routes throughout eight of the eleven states in which Burlington rail operations are conducted, which routes substantially parallel much of the Burlington rail operations. Its principal operations are conducted at motor carrier rates under motor carrier tariffs and involve for the most part truckload traffic. Additionally, it performs on rail freight billing a service for the railroad (Burlington or its subsidiaries) wherever interests of rail shippers or receivers are promoted. A portion of

BTL's operations carry restrictions or limitations to service from or to, or traffic interchanged at points on the rail lines of Burlington or its railroad subsidiaries, or that which is auxiliary to or supplemental of rail service of the railroad. BTL's operations reach Billings, a point served by Great Northern, Northern Pacific, and NP Transport, at which point its lines connect with the Montana motor carrier operations of NP Transport and Great Northern. The latter's certificates are restricted to service auxiliary to or supplemental of rail service of Great Northern and it does not participate with BTL in joint through interstate rates. BTL's operations are duplicative with those of NP Transport to the extent that both operate over U. S. Highways 10 and 310 between Billings and Bridger, Mont., 44 miles, although the service authorized and performed is not duplicative. NP Transport service over that segment is confined to traffic from Billings area to Bridger or other Montana points whereas BTL handles no traffic locally between Bridger and Billings. There are a limited number of joint through interstate rates via Billings participated in by BTL and NP Transport. Through the Billings interchange, BTL in its operations south thereof participates in some joint through interstate traffic moving to and from points in Montana. As of December 31, 1961, BTL operated approximately 145 trucks, 477 tractors, and 2,243 trailers of various types. Of the latter figure 600 were owned by Burlington. It maintains extensive repair and maintenance facilities at Galesburg and Berwyn, Ill., Omaha and Denver. BTL maintains its own freight solicitation sources and none of its traffic department personnel are employees of the parent company. Its principal traffic and operating officials are concerned with motor rather than rail transportation. A substantial volume of its tonnage involves interchange traffic. It interchanges traffic with other motor carriers at all connecting points, principally Chicago, Peoria, and St. Louis. In addition, it transports rail less-than-carload freight for Burlington over truck routes serving stations on the railroad, performs pick-up and delivery service on rail-less-than-carload shipments involving some 20 million pounds annually

at 53 separate locations, transports some mail in peddle service between specified railroad stations, distributes rail carload traffic at eight terminal localities and performs pick-up and delivery service on rail trailer-on-flatcar loads.

Belt Railway, a Missouri corporation, in which Burlington owns 81.82 percent of its outstanding capital stock (Missouri Pacific Railroad Company owning the remainder) owns a bridge traversing the Mississippi River between Alton, Ill., and West Alton, Mo., and owns and operates certain railroad facilities near Alton. It performs switching service to and from industries located on its lines. It facilities are used principally by Burlington, but also by several other railroads.

C&S, a Colorado corporation, in which Burlington owns 74.72 percent of its outstanding capital stock, the remainder being publicly held, operates as a common carrier by railroad in Colorado, Wyoming and New Mexico, its main line extending from Wendover, Wyo., where it connects with Burlington, to the boundary between New Mexico and Texas, near Texline, Tex., where it connects with its wholly-owned subsidiary, FW&D. Its rail operations extend over 713 miles of road of which 610 are owned.

FW&D operates as a common carrier by railroad, solely in Texas, from a junction with C&S at the Texas-New Mexico Boundary to Galveston, Tex., with branch lines to Lubbock, Abilene, and Dimmit, Tex. Its rail operations extend over 1,363 miles, of which 1,003 are owned.

Winona Railway, a Minnesota corporation, in which Burlington owns 66.66 percent of its outstanding capital stock (Green Bay & Western R.R. Co., owning the remainder) owns a bridge traversing the Mississippi River between Winona, Minn., and East Winona, Wis., and certain rail facilities in that area, used by each of its owners in traversing the river.

As indicated in appendix D, Burlington holds minority interests in the capital stock of a number of other carriers subject to the Act. The principal ones which warrant description are: (1) Davenport, Rock Island and

Northwestern Railway Company (DRI&N), (2) Keokuk Union Depot Company (Keokuk Depot), (3) Atchison Union Depot and Railroad Company (Atchison Depot), (4) Paducah and Illinois Railroad Company (PIR), (5) Chicago Union Station Company (Chicago Station), (6) Illinois Northern Railway Company (Illinois Northern), (7) Iowa Transfer Railway (Iowa Transfer), (8) The Denver Union Terminal Railway Company (Denver Terminal), (9) Illinois Terminal Railroad Company (Illinois Terminal), Kansas City Terminal Railway Company (Kansas City Terminal) (10) The Belt Railway Company of Chicago (Belt Railway), and (11) Terminal Railroad Association of St. Louis (Terminal St. Louis). Others have been described or are of little significance.

DRI&N, the capital stock of which is owned in equal proportions by Burlington and the Milwaukee, owns certain railroad facilities in and near Davenport, Iowa, and Rock Island, Ill., including a bridge across the Mississippi River. It performs switching service to and from industries located on its lines for the proprietary lines, and each of those lines uses its properties, particularly the bridge.

Keokuk Depot, the capital stock of which is owned 40 percent by Burlington and 20 percent each by Rock Island and two other railroads, owns and operates a union passenger depot and related facilities at Keokuk, Iowa.

Atchison Depot, the capital stock of which is owned 37.5 percent by Burlington, 25 percent each by Santa Fe and Missouri Pacific, and 12.5 percent by Rock Island, owns and operates a passenger depot facility at Atchison, Kans.

PIR, the capital stock of which is owned in equal proportions by Burlington, and two other railroads, owns certain railroad facilities between Paducah, Ky., and Metropolis, Ill., principally a bridge across the Ohio River. Its facilities are used by each of the proprietary lines.

Chicago Station, the capital stock of which is owned in equal proportions by Burlington, the Milwaukee and two other railroads, owns and operates a passenger station and related facilities in Chicago, used by Burling-

ton, the Milwaukee and two other railroads. Operating expenses are allocated on a use basis. Other expenses, such as taxes, bond interest and sinking fund payments are allocated on an ownership basis. Under the merger proposals applicants contemplate consolidation of certain passenger train operations which would reduce the number of cars handled into and out of the subject facilities but it is not anticipated that employees would be affected.

Illinois Northern, the capital stock of which is owned 51 percent by Santa Fe, 25 percent by Burlington, and 12 percent each by two other railroads, owns and operates certain railroad facilities in southwestern Chicago, and performs switching service to and from industries on its lines and between railroads.

Iowa Transfer, the capital stock of which is owned in equal proportions by Burlington, Rock Island, and two other railroads, operates transfer facilities at Des Moines, Iowa, for the handling of traffic between several railroads.

Denver Terminal, the capital stock of which is owned in equal proportions by Burlington, The Colorado & Southern Railway Company, The Denver & Rio Grande Western, Rock Island, Santa Fe, and Union Pacific, owns and operates Union Passenger Station and related facilities in Denver, which are used by its six proprietary companies.

Illinois Terminal, the capital stock of which is owned in equal proportions by 11 railroads, including Burlington, operates a railroad between St. Louis, Mo., and East St. Louis, and Springfield, Ill., between Springfield and Peoria, Ill., and between Springfield and DeLong, Ill., performing both switching and line-haul service.

Kansas City Terminal, the capital stock of which is owned in equal proportions by 12 railroads, including Burlington, owns and operates extensive terminal facilities at Kansas City, Mo., and engages in some switching and transfer work. Operating expenses are allocated on a use basis, but other expenses, such as taxes and interest on debt are allocated on an ownership basis.

Belt Railway, the capital stock of which is owned by several railroads including Burlington which has a one-

twelfth interest, operates extensive properties in the Chicago area, performing transfer and terminal switching services for its proprietary lines and other railroads.

Terminal St. Louis, the capital stock of which is owned by several railroads, including Burlington, which owns one-sixteenth interest, owns and operates extensive terminal facilities in the St. Louis area, including a passenger depot. Expenses are allocated on a use basis.

In addition to its transportation properties and other investments, Burlington controls, through 100 percent stock ownership, Burlington Refrigerator Express Company, Burlington Equipment Company, and St. Louis & Kansas City Land Company. Through the last named, it is beneficial owner of 100,200 shares, or 1.5 percent of the common capital stock of The Denver and Rio Grande Western Railroad Company, and is also owner for investment only of 60,428 shares or 6.59 percent of the common capital stock of Gulf Mobile & Ohio Railroad.

Pacific Coast, a Washington Corporation, was organized June 15, 1932, to acquire the properties of its predecessor, Pacific Coast Railroad Company. That acquisition was authorized in Finance Docket No. 9576, *Pacific Coast R. Co. Acquisition*, 187 I.C.C. 563, decided September 30, 1932. Pacific Coast has only one class of capital stock outstanding. As of December 31, 1960, it had outstanding 10,000 shares of common capital stock, par value $100 each, all owned by Great Northern. As of December 31, 1961, the record reflects no change. Those shares were acquired by Great Northern pursuant to authority granted in Finance Docket No. 17134, *Pacific Coast R. R. Co. Control*, 282 I.C.C. 600, decided August 31, 1951. It has no other securities authorized or outstanding.

Pacific Coast's railroad operations are all located within King County, Wash., and comprise 32.03 miles of road, all owned by it, consisting of 22.29 miles of main line extending from Seattle through Black River and Renton to Maple Valley, Wash.; 7.61 miles of branch line between Maple Valley and Black Diamond, Wash., and 2.13 miles of branch line at Renton, Wash. Its points of interchange are at Seattle, Black River, Renton,

and Henry's, Wash. Pacific Coast provides freight service only, and does not own any motive power, rolling stock, or major maintenance equipment. Such items of equipment as it requires are leased from Great Northern.

SP&S, a Washington corporation, was organized August 23, 1905, as Portland and Seattle Railway Company. The name of the corporation was changed to its present name on February 1, 1908. SP&S has only one class of capital stock outstanding. It had outstanding as of December 31, 1960, 400,000 shares of common capital stock, par value $100 each, owned 200,000 shares each, beneficially and entitled to voting rights, by Great Northern and Northern Pacific. As of December 31, 1961, no significant change in the above occurred. Of the total of shares owned by Great Northern, 199,995 are owned of record by it, and the remaining five shares are of record in the names of nominees. Of the shares owned by Great Northern, 199,975 shares are pledged with The Hanover Bank under an escrow agreement of February 16, 1911, pursuant to an agreement of the same date with Great Northern, Northern Pacific and SP&S. Of the total of shares owned by Northern Pacific, 199,995 shares are owned of record and 5 shares are of record in the names of nominees. Of the total of the shares owned by Northern Pacific, 199,975 are pledged with The Hanover Bank under the same escrow agreement, and all of the shares (200,000) owned by Northern Pacific are subject to the lien of the Northern Pacific refunding and improvement mortgage. Under the agreements mentioned, the certificate for the 199,975 shares of SP&S stock owned by Great Northern, and the certificate for the 199,975 shares of SP&S stock owned by Northern Pacific, are to be returned to Great Northern and Northern Pacific, respectively, upon satisfaction of the mortgage or deed of trust securing certain bonded indebtedness of SP&S, upon joint written request of Great Northern, Northern Pacific, and SP&S.

SP&S's long-term debt as of August 31, 1961, consisted of bonds aggregating $54,710,000, and equipment obligations aggregating $5,067,460, including $1,055,967 due within one year. As of December 31, 1961, its long-

term debt consisted of bonds aggregating $54,710,000 and equipment obligations $4,729,288. Details respecting the obligations comprising such debt are described elsewhere herein.

Since 1909, SP&S has been continuously engaged in transportation by railroad as a common carrier. Its present railroad operations are in Washington and Oregon, and comprise 599.53 miles of road, of which 515.26 are main line (450.37 are owned, including two segments—5.40 miles—jointly with Northern Pacific, 29.40 are trackage rights from various other rail carriers, and 35.49 are leased from Northern Pacific) and 84.27 are branch line, all owned. It wholly owns and controls Oregon Electric Railway Company (Oregon Electric) and Oregon Trunk Railway (Oregon Trunk) subsequently discussed, which are operated as part of its system, and the operating results of those companies are not separately reported, but are combined on a system basis in the reports of SP&S to this Commission. The main lines of SP&S, exclusive of those of Oregon Electric and Oregon Trunk, extend from Spokane westerly along the Snake and Columbia Rivers to Portland, and from Willbridge, Oreg., to Seaside, Oreg. The principal branch lines extend from Lyle, Wash., to Goldendale, Wash., and from United Junction, Oreg., to Vernonia, Oreg. The principal points of interchange are at Spokane, Pasco, Vancouver, and Wishram, Wash., and Portland, East Portland, North Portland, Willbridge, Bowers Junction, and Linnton, Oreg.

As of December 1, 1960, it owned 107 diesel units of locomotive, 3,692 freight train cars, and 54 passenger train cars. On December 1, 1961, however, it owned 3,614 units of freight train car equipment, of which 2,435 were box cars, including 492 double-door cars.

In addition to the above-described transportation properties, SP&S holds property rights in the nature of trackage rights to operate over the lines or segments of lines of other railroads, and, in some instances, utilizes jointly with others described terminal or passenger station facilities, covered by currently effective agreements, the nature of which, and other vital statistics of which, are set forth in appendix D.

As indicated, SP&S controls through 100 percent stock ownership the following carriers subject to the Act: (1) Oregon Electric and (2) Oregon Trunk. Oregon Electric, an Oregon corporation, organized May 14, 1906, operates a line of railroad consisting of 201.25 miles (167.25 owned and 34 miles under trackage rights) extending from Portland to Eugene, Oreg., with branches to Forest Grove, Fostee, and Dollar, Oreg. As of December 31, 1960, its equipment comprised 48 flat cars and one rack car. It owns no motive power. It is operated as an integral part of the SP&S system with SP&S trains operating over its trackage and SP&S officers serving also as its officers. It has no employees. All of its outstanding long-term debt is owned by SP&S. Under the proposal involving SP&S lease its corporate identity would be retained but the operations would become an integral, though separate part, of New Company during the term of the lease in the same manner as conducted by SP&S since the New Company would operate all SP&S interests.

Oregon Trunk, a Washington corporation, wholly-owned by SP&S, organized November 3, 1909, operates a line of railroad consisting of 151.93 miles (127.93 owned and 24 miles under trackage rights from Union Pacific) extending from a connection with SP&S at Wishram, Wash., to Bend, Oreg. It owns no equipment, all of its motive power and equipment being furnished by SP&S. It also is operated as an integral part of the SP&S system with SP&S trains operating over its trackage and SP&S officers serving also as its officers. It has no employees. Under the proposal involving SP&S lease, its interests would be affected similarly to those of Oregon Electric.

SP&S also owns a minority interest in the capital stock of another carrier and a non-carrier more specifically set forth in appendix E hereto.

Officers, directors, and intercorporate relationships.

The record shows that there are a number of intercorporate relationships between applicants in the nature of common officers and/or directors. Several officers and directors of applicants hold positions in common and serve in similar capacities with respect to various affili-

ated companies. Several officers of some applicants are officers or directors or trustees of others. Of the officers and/or directors of Great Northern, eighteen function as officers or directors or trustees of fourteen affiliates. Of the officers and/or directors of Northern Pacific, six function as officers and/or directors or trustees of thirteen affiliates. Of the officers and/or directors of Burlington, two function as officer and/or director of twelve affiliates. Appendix F attached hereto sets forth the names of the members of the boards of directors and officers of New Company, Great Northern, Northern Pacific, Pacific Coast and SP&S, as of October 1, 1961. Certain individuals whose names appear in appendix F hold positions with one or more of the carriers or affiliates, and the intercorporate relationships thereby created among the respective applicant carriers and their affiliates are set forth in appendix G.

Upon consummation of the Northern Lines merger here involved, the board of directors of New Company would be increased from three to twenty-four. Of the vacancies thus created, nine are to be filled by the election of persons who are then directors of Great Northern, nine by the election of persons who are then directors of Northern Pacific, and three by the election of persons who are then directors of Burlington, but are not then officers or directors of either Great Northern or Northern Pacific.

There are several intercorporate relationships between New Company and Great Northern and Northern Pacific as set forth in appendix G.

Traffic participation.

The area of the United States served by the component railroads embraces the Midwest and South Central Plains, the northern portions of the Central Plains, and of the Great Plains, Mountain and Pacific Territory. The major transcontinental routes of Great Northern Pacific operate generally through the same northern states between Twin Cities (St. Paul and Minneapolis, Minn.) and Puget Sound, and the Pacific Northwest. The major transcontinental routes of Burlington are between Chi-

cago and Twin Cities, and between Chicago and Kansas City, Omaha and Denver. The lines of SP&S form part of the through routes of Great Northern and Northern Pacific on traffic to and from northwest coast terminals.

The lines of the two Northern lines, although their main lines are geographically parallel, are complementary to each other. The greater part of the mileage of the Northern Pacific is on the western part of its system, while most of the mileage of the Great Northern is on the eastern part of its system. To a greatly preponderating extent, the lines of the two Northern lines serve distinct local territories, Great Northern serving primarily the northern portion of the northern tier of states west of Minnesota and Northern Pacific serving primarily the southern portion thereof, while only Great Northern has mileage in South Dakota, Iowa, and in the southern part of Minnesota. As a result, the actual competition between the lines of the two companies is relatively small, except at important terminals which enjoy and will continue to enjoy ample competitive service from other lines and routes already available.

The great portion of the area served by the Northern Lines is characterized by light precipitation, high elevation, and comparatively short growing season, all of which tends to place natural and unavoidable restrictions on industrial expansion. Moreover, the area served by the Northern Lines is characterized by concentration of population on their eastern and western termini, between which is an extensive area over 1,700 miles in length and over 900 miles in breadth, rich in animal, agricultural, mineral and forest resources, but light in distribution of population. Comparison of population data for 1950 and 1960 show that except for the states served by the Northern Lines on their eastern and western termini population increase has been substantially less than the national average increase and far less than the "explosive" increase that has marked such southwestern states as California and Arizona.

The economy of the vast intermediate area between the eastern and western termini of the Northern Lines is almost entirely based on products of agriculture, ani-

mals, forests, and mines, as distinguished from that area embraced in the territory served by the Burlington, which is significant by its participation in products of agriculture, mines, manufactures and miscellaneous, and forwarder traffic. Industrial development where it exists modifies the basic products of the area into semi-finished forms. The local economy within that area is predicated upon the distribution of the finished products of manufacture consisting of the basic tools used in the producing areas and the ordinary articles of livelihood used by a population dependent upon basic products.

From the earliest times involving transportation in the area involved, the production of the basic products of the intermediate territory has been predicated on the dependence on and availability of transportation facilities at rates sufficiently depressed to enable producers to meet the market competition created by producers located closer to the great consuming areas, or who, for other reasons, have lower transportation costs. The burden of such depressed rates on the products of the Pacific northwest is not one which is the choice of railroad management to reduce rates to regain traffic from competitive transportation agencies, but is more fundamental in that if depressed rates are not provided to meet marked competition the ability of the western producing areas to reach essential markets is destroyed and the area economy damaged. Those basic products, so far as they relate to the area served by the Northern Lines and SP&S, involve generally iron ore of northeastern Minnesota, around which the area economy is built, products of forests (pulpwood, wood bolds, and short logs moving to paper mills, pulpboard and match block plants) of north central Minnesota, sugar beets, sugar, beet sugar final molasses, beet pulp, grain and potatoes from the Red River Valley area of western Minnesota, grain from Minnesota, North Dakota and Montana, petroleum and oil, and salt from the Williston Basin area of northwestern North Dakota and northeastern Montana, lignite from western North Dakota, non-ferrous metals and aluminum from Montana, Washington, and Oregon, residual oils and asphalt from Wyoming, North Dakota and

Montana, vermiculite and magnesite from north central Montana and northeastern Washington, fresh fruits and vegetables from Washington and Oregon, and forest products from Oregon, Washington and Idaho. This traffic involving forest products is a major contributor to the economy of Great Northern, Northern Pacific and SP&S, supplies and forms in excess of 35 percent of the eastbound transcontinental revenue of railroads serving Transcontinental territory and is basic to the economy of the Pacific Northwest.

The area served by the two Northern Lines and SP&S has a serious and continuous problem in marketing its products since it is located far from the centers of population on and east of the Mississippi River and on the Pacific seaboard, and those interior states provide but a limited market for the products produced in volume in such states, and, accordingly, volume production depends on ability to reach national centers of population. Thus, such products as are produced in volume are heavily dependent on sound, efficient railroad transportation, and no other form of transportation can offer all of the producers the services they require to participate in major markets. Moreover, rates provided must be adequate to meet market competition, otherwise the ability of the producing areas served by the Northern Lines and the economy of those areas would be adversely affected.

While the area served by the Burlington is, in general, more heavily populated than the areas served by the Northern lines, the circumstances of market competition of competing products and the need for maintenance of adequate or depressed rates are also found with respect to various products handled by Burlington. The area served by Burlington provides in part a market for the basic raw and semi-manufactured products of the fields, forests and mines of the western territory served by the two Northern Lines, it is complementary in part, and it is significant that Burlington has connections at Chicago and Peoria, Ill., and St. Louis with other trunk and terminal lines serving large steel, machinery, and manufacturing plants that find a market

in the northwest area. Moreover, Burlington serves many packinghouse centers of the midwest, including Omaha, Denver, Chicago, Kansas City, St. Louis, and St. Joseph, Mo., whereas the Northern Lines serve the livestock growing areas of the Northwest. Burlington's lines are complementary also in that it serves the common terminals of Twin Cities, Sioux City, and Laurel, at which points important interchange of freight is conducted between the principal applicant carriers. However, Burlington's relative participation in traffic involving manufactures and miscellaneous and forwarder traffic, via Missouri River and Denver gateways, and in long-haul transcontinental traffic via those gateways, compared to its other type traffic, is insignificant.

The flow of traffic between Pacific Northwest and Midwest and Eastern territory is generally unbalanced, the eastbound and westbound movements having distinctive differences. Historically, eastbound traffic generally consisted of basic or semi-basic products of the area served, principally in the group products of agriculture, products of mines and products of forests.

Significantly, the transcontinental hauls of the railroads of the Pacific Northwest are among the longest rail hauls in the world. As distances increase, the efficiency and economy of rail transportation in relation to motor carriage likewise increase. The long haul, lower-rated production of the west gathered from the producing areas throughout the territory is generally not attractive to motor carriers and for the most part not susceptible to economical transportation by any other mode of transportation and is entirely dependent upon rail transportation. Whereas, the higher-rated manufactured articles moving to the west for consumption and those products of agriculture, such as grain, for which there is a relatively inelastic demand, are highly vulnerable to intermodal competition. It is the relatively higher rated traffic which has historically served to balance the revenues of the rail carriers engaged in transporting in volume the lower-rated, market-competitive traffic of the west.

However, throughout western Minnesota and North Dakota, Great Northern and Northern Pacific have main-

tained an extensive system of branch lines in order to provide grain producers with efficient transportation of products to the major markets. Burlington maintains an extensive branch line system, principally for grain in Nebraska and Kansas. Coupled with the extensive branch line operation has been the establishment and maintenance of inspection points to facilitate merchandising of grain, and the railroads have continued to make contributions in the vital matter of car supply. In recent years, agriculturally exempt motor carriers have created discriminatory conditions of competition between motor carrier transportation and railroad transportation which have caused some concern to the railroads, particularly dealing with movement of exempt agricultural commodities in a return movement when they had previously participated in a single directional movement. Moreover, in recent years when industrial production of the Pacific Northwest has evidenced signs of growth as a result of decentralization of plants of eastern manufacturers, the new producing plants of finished articles, substantial aids to the economy of the Pacific Northwest, provide only a limited market area, except for surplus production, and such traffic which previously moved westbound, is vulnerable and attractive to motor carrier competition, and lost to the long hauls of the railroads.

Thus, railroads serving the western areas face a prospect of continuing market problems in the movement of basic products of the west to national markets in cooperation with producers of the area, and declining return on westbound long-haul movements of finished articles which would not be replaced by revenues on shorter hauls from decentralized plants.

Western territory generally has historically been a market for finished products of the East and Midwest. Under national economic changes, including development of industry in the South, the Southwest and along the Pacific seaboard, interior territory and terminal areas of applicant railroads remain a market for finished products of East and Midwest, but with the significant changes that decentralized producers of many major commodities, particularly in California, now distribute in a

reverse direction as far from the Pacific seaboard as central Montana and east thereof.

Moreover, with concern for national economic changes, it is significant to note that when the railroads were built westward during the last part of the last century, problems of inducing traffic from the newly opened areas necessitated establishment of branch lines to develop the territory in relation to known natural resources and a responsibility to provide low rate levels on those basic products of the newly opened areas moving eastward with the view that flow of finished articles of consumption would move westbound to the new areas and provide a compensatory balancing of traffic and revenue offsetting the depressed charges for movement of the basic products of the area.

Considerable traffic terminating in the area served by applicant railroads is included in statistical data dealing with group manufactures and miscellaneous and forwarder traffic described elsewhere herein. Such traffic has always been higher-rated traffic than other groups and is attractive and vulnerable to motor carrier competition which has been aided by demands of interior territory for movement of such traffic in less than carload quantities and improvements in available highway facilities.

During the period up to the early thirties the Northern Lines participated in substantial movements of solid fuels from producing areas on their lines and at and east of their eastern termini. Those movements, except for movements to public utility plants, have been eroded by the increased use of petroleum and natural gas. Petroleum products until the early thirties moved almost exclusively by rail throughout the area, but pipe lines from producing areas to strategic locations within terminal areas on applicant railroads' lines have for all practical purposes eliminated long haul movements of light petroleum products by rail.

Extension of navigation on the Columbia River, permitting water borne petroleum products to move via barge to up river points accessible to points in the Inland

Empire [15] area, together with extensive use of tank ships in coastwise operation on the Pacific Ocean, and motor truck distribution beyond river terminals, has eliminated rail movement of light petroleum products to and through Pacific coast terminals.

Over the past three decades, improvement of public highways, together with technological improvements in motor vehicles, has made the general flow of manufactured goods to the interior areas vulnerable to growing motor carrier competition. In addition, statutory exemption in current regulatory laws has enabled motor carriers to participate in the movement of agricultural products without publication of rates and with no responsibility to avoid discrimination or preference and prejudice as between shippers or localities, which exemption has also made it possible for motor carriers of manufactured and finished commodities having a one way movement to balance their operations by securing return hauls of agricultural commodities from selected points at unpublished rates substantially below rail carload rates on the same commodities. Moreover, in recent years specialized motor carriers handling commodities such as bulk cement, agricultural implements and tractors, and iron and steel articles have made serious inroads on revenues received from those traffic groups, both from traffic lost and rate reductions made to maintain rail transportation competitive. Private motor carriage together with low cost water transportation on the Great Lakes and Mississippi River have had effect on revenue reduction from applicant railroads. Some commodities, such as building materials, have been partially retained by the railroads, but requirement for off-track deliveries has permitted continued loss of traffic despite rate reduction to meet motor truck competition.

Although there are significant aspects on the other side of the coin, such as use of improved and specialized

[15] It was stipulated that the Inland Empire area is defined as eastern Washington, northern Idaho, and western Montana, bounded on the west by the Cascades, on the north by the Canadian border, on the east by the Rockies and Bitterroot range and on the south by the Blue Mountains.

rail freight equipment designed for specific shippers or specific types of commodities, and extended use of technological advances in railroad operational techniques where possible and feasible, and while railroad participation in traffic in finished articles should normally follow national increases in population and production, because of economic and technological change and competition of other modes of transportation, applicant carriers' experience indicates they are not securing their share of that increase and this is a continuing threat to the maintenance of sound railroad service.

The operations unified as proposed under New Company's direction and control with important routes between California, Oregon, and Washington, on the one hand, and transcontinental territory on the other, and its services to and from intervening areas, together with enlarged stock of rolling equipment of varied types and uses, and an ability to coordinate that equipment to serve the needs of the enlarged service area, would permit a revision of and grouping of revenues both from the traffic above described with revenues from the basic commodity groups originated in the interior in a pattern which would produce a stronger railroad than the component applicant carriers separately. Because Great Northern' lines are generally north of those of Northern Pacific, and both are north and west of those of Burlington, and because the physical characteristics of the country traversed by those railroads are somewhat different, there are significant differences in their traffic experiences in the major commodity groups from which their revenues are derived, and those differences, including fluctuation of traffic and revenues arising from such conditions as bad harvest for particular crops, shrinkage in ore, iron and steel shipments during industrial strikes, and other economic conditions which from time to time affect the volume of traffic in certain commodities and certain areas, give impetus to the proposals in that efforts to balance traffic are a constant concern in the operations of a carrier system. The highly variant experiences in those major commodity groups by the principal applicant carriers, it is advanced, would make for a more balanced transportation agency under

consolidation. Those differences are reflected in the data which follow.

Great Northern's railway operating revenues for 1960 were $246,024,650, of which its gross carload freight revenue aggregated $221,671,274, and by major commodity groups are divided as follows:

Group	Carloads	Tons	Gross freight revenue	% of system C.L. rev.
Products of agriculture	216,313	9,400,040	$70,219,799	31.68
Animals and products	21,447	288,214	3,896,599	1.76
Products of mines	418,697	26,465,179	40,250,458	18.16
Products of forests	119,037	3,963,179	37,900,327	17.10
Manufactures and misc.	251,799	7,629,647	63,831,964	28.80
Forwarder traffic	15,976	170,347	5,572,127	2.50

Northern Pacific's railway operating revenues for 1960 were $174,915,492, of which its gross carload freight revenue aggregated $155,570,634, and by major commodity groups was divided as follows:

Group	Carloads	Tons	Gross freight revenue	% of system C.L. rev.
Products of agriculture	134,272	5,561,486	$32,022,139	20.58
Animals and products	20,136	287,157	4,090,623	2.63
Products of mines	100,780	5,825,494	12,707,165	8.17
Products of forests	167,330	5,811,561	46,301,843	29.76
Manufactures and misc.	221,780	6,998,380	58,013,482	37.29
Forwarder traffic	7,131	74,043	2,435,382	1.57

Burlington's railway operating revenues for 1960 were $251,135,890, of which its gross carload freight revenue aggregated $211,504,613, and by major commodity groups was divided as follows:

Group	Carloads	Tons	Gross freight revenue	% of system C.L. rev.
Products of agriculture	281,331	11,771,182	$47,989,589	22.69
Animals and products	101,884	1,413,321	17,149,764	8.11
Products of mines	299,909	16,912,562	32,668,625	15.45
Products of forests	83,690	2,538,776	14,409,752	6.81
Manufactures and misc.	474,116	13,649,299	89,448,715	42.29
Forwarder traffic	72,453	789,559	9,838,158	4.65

SP&S' railway operating revenues for (on a system basis) 1960 were $32,705,176 [16] of which its gross carload freight revenue aggregated $30,364,409, and by major commodity groups was divided as follows:

Group	Carloads	Tons	Gross freight revenue	% of system C.L. rev.
Products of agriculture	40,896	1,747,204	$ 7,081,186	23.32
Animals and products	2,445	46,764	251,246	.83
Products of mines	10,811	598,543	1,115,358	3.67
Products of forests	83,340	2,861,407	11,641,793	38.34
Manufactures and misc.	111,919	3,420,399	9,586,529	31.57
Forwarder traffic	4,344	79,145	688,297	2.27

Pacific Coast's railway operating revenues for 1960 were $318,311, of which its gross carload freight revenue was $281,421, and segregated by designation of class in which it received revenue of $10,000 or more, is as follows:

Group	Carloads	Tons	Gross freight revenue	% of system C.L. rev.
Products of mines	760	43,609	$ 44,881	15.95
Manufactures and misc.	5,940	162,068	230,948	82.06

[16] SP&S railway operating revenue alone for 1960 was $25,048,890. There is no breakdown of that data showing gross carload revenue except on a system basis.

Based on the above, and on a consolidated basis, the operations of Great Northern, Northern Pacific, Burlington and SP&S (exclusive of Pacific Coast the revenues of which were small as previously indicated) for 1960, would have reflected an improved balance both in the separate classes and in the major groups and a higher degree of stability, as follows:

Group	Carload freight revenues 1960-unified	Percentage distribution -unified
Products of agriculture	$157,312,713	25.41
Animals and products	25,388,232	4.10
Products of mines	86,741,606	14.01
Products of forests	110,253,715	17.81
Manufactures and misc.	220,880,690	35.68
Forwarder traffic	18,533,964	2.99
	$619,110,920	100.00

Railroad properties—Valuations:

The property involved in the proposed mergers includes all of the properties of Great Northern, Northern Pacific, Burlington and Pacific Coast, and the property involved in the proposed lease includes all of the property of SP&S. In the tabulation attached as appendix H are shown the recorded valuations of the transportation properties of each of the named carriers as determined by the Commission for rate-making purposes, as of June 30, 1915, for Great Northern (133 I.C.C. 1, 153, 156), June 30, 1917, for Northern Pacific (25 Val. Rep. 397, 440) and for Burlington (134 I.C.C. 68, 69), June 30, 1916, for Pacific Coast (121 I.C.C. 11, 16) and for SP&S (41 Val. Rep. 1, 27). Where applicable the data reflect appropriate adjustments heretofore necessary to give effect to various acquisitions and other changes which, from time to time, were combined to form each of the present systems. Separately shown is the net cost of additions and betterments made to the properties of each of the named carriers since the valuation dates indicate above formed by the Commission to December 31, 1960.

Each of the applicants, other than New Company, observes depreciation accounting with respect to railroad property and equipment in accordance with the provisions of the uniform system of accounts for railroads prescribed by the Commission. For all such applicants, the rates so accrued by classes of property are reflected in their respective annual reports to this Commission.

Other properties—Valuations:

Valuations ascribed to non-railroad properties are discussed herein in connection with stock exchange considerations and approved reports. Those valuations are the results of independent examinations and appraisals of various types of properties by a number of qualified appraisers whose identity and extent of their analysis is likewise discussed.

Financial.

The three major railroad applicants, Great Northern, Northern Pacific, and Burlington, have enjoyed a moderate degree of prosperity over the past several years, and each railroad is currently in a relatively healthy financial condition. SP&S has enjoyed a similar position, but, as it is wholly owned by Great Northern and Northern Pacific, its success is dependent upon the success of its parent railroads. Pacific Coast is dependent entirely upon Great Northern. The financial position of those carriers is best portrayed in the series of appendices attached to which reference is made.

Attached hereto as appendix I-1 is a tabulation showing in separate columns general balance sheet statements, as at August 31, 1961, for (1) New Company, (2) Northern Pacific, (3) Great Northern, (4) Pacific Coast, (5) combined balance sheet data of New Company embracing that of Great Northern, Northern Pacific, and Pacific Coast, (6) account adjustments and eliminations giving effect to Northern Lines merger transaction, and (7) adjusted and combined pro-forma general balance sheet statement of New Company after Northern Lines

merger transaction is effected, together with appropriate notes.

Appendix I-2 hereto is a tabulation showing in separate columns as at August 31, 1961 (1) pro-forma general balance sheet statement of New Company, after Northern Lines merger transaction is effected, (2) account adjustments to reflect results of proposed issuance and purchase of $70 million Burlington bonds, (3) general balance sheet statement of Burlington, (4) account adjustments and eliminations giving effect to Burlington merger transaction, and (5) adjusted and combined pro-forma general balance sheet statement of New Company after Northern Lines merger transaction and subsequent Burlington merger transaction is effected, (6) account adjustments and eliminations of intercompany transactions, and (7) pro-forma general balance sheet statement of New Company, after subsequent Burlington merger transaction, together with appropriate notes.

Appendix I-3 hereto is a tabulation showing in separate columns as at August 31, 1961, (1) pro-forma general balance sheet statement of New Company after Northern Lines merger transaction and Burlington merger transaction are effected, (2) general balance sheet statement of SP&S, (3) combined balance sheet data of New Company, (4) account adjustments and eliminations giving effect to subsequent lease by New Company of SP&S, and (5) adjusted and combined pro-forma general balance sheet statement of New Company after Northern Lines merger, Burlington merger, and SP&S lease transactions effected, together with appropriate notes.

Appendix I-4 hereto reflects the pro-forma retained income-unappropriated as of August 31, 1961, after giving effect to unification of the subject properties.

The accounting data shown in the pro-forma balance sheet statements are not to be construed as recommended for approval at this time, but will be subject to consideration upon submission of statements showing all expenditures and the accounting entries proposed to record the transactions as required by the order herein.

The excess of current assets over current liabilities as of August 31, 1961, produces a net working capital position for Great Northern, Northern Pacific and Burlington of $32.6 million, $73.4 million, and $28.9 million, respectively, or a combined total of $134.9 million before adjustments and elimination of intercompany balances. The net working capital position of Great Northern, Northern Pacific and Burlington which exceeds by $18.2, $62.6 and $13.9 million, respectively, the mean monthly average of their respective operating expenses, less depreciation, for the first eight months of 1961 of $14.4, $10.8, and $15.0 million, respectively, is more than adequate to meet normal requirements. The pro-forma balance sheet after giving effect to merger of New Company and Burlington, including lease of SP&S, and after intercompany adjustments and eliminations, reflects net working capital, excess of current assets over current liabilities, of $116.2 million. After merger, the long-term debt of New Company would be $780,538,351, or approximately 38.2 percent of the $2,038.4 million net recorded book value of its total transportation properties. As of August 31, 1961, the pro-forma shareholders' equity of $1,642.6 million would be approximately 1.6 times the total debt structure of $932.7 million and thus a favorable debt-equity ratio would be maintained after the unification.

Appendix I-5 hereto reflects, as of August 31, 1961, a detailed tabulation of the long-term debt of each of the applicant railroads. It is noted that Pacific Coast had no long term debt except for an advance of $230,000 payable to Great Northern.

Appendix I-6 hereto is a detailed tabulation of contingent liabilities of each of applicants (except Pacific Coast, SP&S and New Company which have none) as at August 31, 1961. The contingent liabilities exist by virtue of obligations incurred as guarantor. As of August 31, 1961, Great Northern, Northern Pacific and Burlington were liable as guarantors on certain obligations of affiliated companies of approximately $14,244,000; and each is contingently liable as guarantor along with other railroads for its proportion (approximately

2.7 percent each) and in addition its proportionate share of any contingent obligations not met by other railroad participants, of the obligations of Trailer Train Company, aggregating $84,696,000.

Assumption of the obligations of the bonds and encumbrances by New Company would be, as indicated, evidenced by supplemental indentures (unexecuted copies of which are of record) executed and delivered in respect of the bonds and encumbrances of Great Northern and Northern Pacific, as soon as the Northern Lines merger transaction is effected, and in respect of bonds and encumbrances involving Burlington, as soon as the Burlington merger transaction is effected. Fixed charges to be assumed by New Company will not exceed the total of such charges now accruing to each company individually.

Appendix I-7 hereto is a tabulation showing in separate columns for the years 1958, 1959, 1960, and the first eight months of 1961, income statements for Great Northern, Northern Pacific, Burlington, Pacific Coast, and SP&S, and pro-forma income statements reflecting operations for the first eight months of 1961, under the combined operations giving effect to consummation of Northern Lines merger transaction, Burlington merger transaction, and SP&S lease transaction.

Income statements for Great Northern for the years 1958, 1959, 1960, and the first eight months of 1961, reflect railway operating revenues of $251.7, $254.6, $246.0 and $150.7 million, respectively, with net income for the same period of $25.6, $26.6, $20.7, and $8.7 million, respectively. Operating ratio for the same period increased from 75.04 percent in 1958 to 78.87 percent in 1960 and to 83.07 percent for the first eight months of 1961. Earnings per share which were $4.52 in 1958 declined to $3.41 in 1960. Dividends of $3.00 per share were paid in each year.

Northern Pacific's income statements for the years 1958, 1959, 1960 and the first eight months of 1961, reflect railway operating revenues of $179.1, $183.6, $174.9, and $108.8 million, respectively, with concurrent net income of $22.0, $23.8, $18.5, and $8.9 million, respectively.

Operating ratio for the same periods were 79.87, 79.74, 84.54, and 87.85 percent, respectively. Earnings per share which were $3.68 in 1958 increased to $3.97 in 1959 but declined to $3.10 in 1960. Dividends of $1.67 per share were paid in 1958, $2.00 per share in 1959 and $2.20 per share in 1960. While Northern Pacific has enjoyed a moderate degree of prosperity and is in a relatively healthy financial condition approximately 26 percent of its net income in 1958 was derived from nonoperating property with such income accounting for approximately 38 percent in 1959, 45 percent in 1960 and 62 percent in the first eight months of 1961. In addition, Burlington dividends amounting to $6,226,343 were received in each of the years 1958, 1959, and 1960. Thus, it is apparent that if Northern Pacific was dependent upon income derived solely from railway operations, it would not have enjoyed such financial health.

Burlington income statements for the years 1958, 1959, 1960, and the first eight months of 1961, reflect railway operating revenues of $258.0, $263.1, $251.1, and $166.8 million, respectively. Operating ratio for the same period progressively increased from 77.61 percent in 1958 to 81.21 percent in 1960 and decreased to 80.27 percent for the first eight months of 1961. Earnings per share which were $11.41 in 1958 declined to $7.31 in 1960. Dividends of $7.50 per share were paid in each year.

Income statements for SP&S, exclusive of OE and OT, for the years 1958, 1959, 1960 and the first eight months of 1961, reflect railway operating revenues of $25.0, $26.8, $25.0, and $15.4 million, respectively, with net income for the years 1958, 1959, and 1960 of $1.0, $2.3, $0.3 million, respectively, and a deficit in net income of $57,332 for the first eight months of 1961. Operating ratio decreased from 78.67 percent in 1958 to 76.06 percent in 1959 and increased to 79.96 and 83.51 percent, respectively in 1960, and first eight months of 1961. SP&S did not pay dividends in any year.

Pacific Coast income statements for the years 1958, 1959, and 1960 and the first eight months of 1961 reflect railway operating income of $285,666, $316,625, $318,311 and $195,594, respectively, with concurrent net

income of $79, $27,361 and $15,234 for the years 1958, 1960, and the first eight months of 1961, and a deficit in net income of $230 in 1959. Operating ratio for the same periods were 84.67, 88.17, 82.68 and 86.84 percent, respectively. Pacific Coast did not pay dividends in any year.

The pro-forma income statement for New Company for the first eight months of 1961, before giving effect to anticipated savings to be realized through unification as recomputed by the hearing examiner, as subsequently discussed, reflects railway operating revenues of $441.9 million with concurrent net income of $17.5 million. A reconciliation with the hearing examiner's determination of anticipated savings based on the assumption that unification had been accomplished and savings realized during the first eight months of 1961, reflects net income of $29.9 million.

Appendix I-8 hereto, is a schedule showing earnings per share of common stock, dividends declared per share, and the mean stock market price per share and the amount of dividends declared for Great Northern, Northern Pacific and Burlington for the years 1951 to 1960. Earnings per share of Great Northern have ranged from a high of $5.32 per share in 1956 to a low of $3.41 in 1960; dividends declared per share ranged from $2.00 in 1951 to $2.63 in 1956 and $3.00 per share in 1957 to 1960 and the mean market prices per share have ranged from a low of $25.88 in 1951 to a high of $52.31 in 1959. Earnings per share of Northern Pacific have ranged from a low of $2.41 in 1954 to a high of $3.97 in 1959 and the mean market prices per share have ranged from a low of $25.50 in 1951 to a high of $49.56 in 1959. Burlington earnings per share ranged from a high of $16.39 in 1952 to a low of $7.31 in 1960; dividends declared of $7.00 per share in 1951 have remained steady at $7.50 from 1952 to 1960 and the mean market price per share has ranged from a low of $115.50 in 1961 to a high of $174.00 in 1957.

Since New Company proposes to assume the existing obligations of Great Northern, Northern Pacific and Burlington, New Company's fixed charges will be increased.

The approximate amount of the obligations to be assumed has previously been referred to. There will, however, be no increase in the aggregate fixed charges of the applicant railroads. There is no guaranty or assumption of payment of dividends provided for in the plan of unification. In the hearing examiner's opinion, the additional liability for applicant railroads fixed charges which New Company proposes to assume is justified by the anticipated increased earning power of the unified company, the economies to be effected from unification, and by reason of the fact that the properties and property rights of applicant railroads will become the property of New Company. Because of those considerations and in view of the relatively stable financial condition of each of the applicants, the increase in fixed charges will not jeopardize the rights of security holders of the unified company or in any manner impose an undue financial burden on the New Company.

The earnings of applicant railroads in recent years portrays with marked significance the results of their operating experiences and form the basic reason supporting their efforts to seek methods of effecting economies and efficiencies through unification of their properties. The evidence of applicants supporting their argument that they have experienced a continuing narrowing of the margin between income and outgo is reflected in its computations of rate of return. The data shown in appendix I-9, hereto reflects in one column as computed by the principal applicant railroads the rate of return each has experienced on *average net investment*, that is average of the beginning and end of each year, and net railway operating income as reported to the Commission the carriers' Form A reports for the years indicated. No data is shown for Pacific Coast as its size and contribution to the subject would be insignificant. Net investment is the sum of the book investment in transportation, property, less recorded depreciation and amortization, plus cash and materials and supplies. In the adjoining column, there is reflected the results of an analysis of rate of return, computed by the hearing examiner from the carriers' Forms A for the particular year in

conformity with the expression of the Commission in *Increased Freight Rates*, 1951, 284 I.C.C. 589, 607. See also *Northampton and Bath R.R. Co.*, 149 I.C.C. 244, 263-272 in which the determination was made as to how working capital should be computed. It is evident, regardless of which method may be utilized, the net results herein are the same, i.e., a clear and unmistakable showing of a decline of rate of return from operations for each of the applicant railroads since 1951. The highest rate of return earned by any of the applicant railroads in 1961 was 2.51 percent on the basis of average net investment (or 2.42 percent as computed by the hearing examiner) by Burlington, which is far from satisfactory.

In that regard, a decision of the Commission in 1937 provides some remarks that are so aptly pertinent on the facts here presented. In *General Commodity Rate Increases, 1937*, 223 ICC 657, the Commission at pages 728-9 commented on a rate of return for the year ending April 30, 1937, which it calculated at between 3.53 percent and 3.98 percent:

> "The record amply justifies the conclusion that in the aggregate the railroads are earning very materially less than a reasonable return on the fair value of their carrier properties. Let us then, consider the significance of that conclusion. It means, of course, that the great majority of the individual railroads are not earning the return which the Supreme Court has held that under the Constitution they must be given an opportunity to earn. But it has a practical significance to the country quite apart from any question of the constitutional rights of the property owners. The public service which our railroads perform has been committed to private enterprise sustained by private capital. There are conditions necessary to the successful operation of that system of providing a public service, and these conditions must be respected, if results satisfactory to the country are to be had."

It is significant to note that when, in 1930, the Commission found in the *Acquisition case, supra*, that it

would be in the public interest for Great Northern, Northern Pacific, and SP&S to achieve economies and efficiencies through merger, its conclusion was based on a much more favorable earnings record for the carriers involved than is now present. The data portrayed by a portion of another exhibit of record as reflected in appendix I-10, permits a comparison of the Great Northern, Northern Pacific and Burlington for the years during the period 1926-1961.

Within the last decade the financial condition of the applicant railroads has shown a steady deterioration. Although each of the railroads and their combined railway operating revenues showed an increase from 1926 through 1950, subsequent thereto there was some stability in revenues, but the squeeze on net income which began in 1930 and had a short rise just prior to and during the years of World War II, has since showed a marked decline to a point where the combined net railway operating income in 1961 was about one-half of what it was in 1926.

Great Northern's railway operating income in 1961 was more than $10 million less than it was in 1950, and its net income has decreased by almost the same amount. Earnings per share, which were $4.56 in 1950, were $3.07 in 1961. Northern Pacific's net railway operating income in 1961 was $14 million less than it was in 1950, although its net income in 1961 was more than $3 million less than it was in 1950. Earnings per share, which were $3.28 in 1950, and $2.72 in 1961. Burlington's net railway operating income declined in eight of the eleven years between 1950 and 1961 from $37,807,000 to $18,-918,000, an overall decrease of almost 50 percent.

Other data portrayed by a portion of an exhibit of record as reflected in appendix I-11 hereto, permits a comparison of the percent of return on shareholders' equity in Great Northern, Northern Pacific and Burlington during the period 1926-1961. The statistics evidence the deterioration in the position of the stockholders of applicant railroads since the decision in the *Acquisition case, supra.* The declining earnings of the applicant railroads is thus obvious, and is the principal motivation for

unification of the properties in order to take advantage of economies and efficiencies which unification would provide.

Attached hereto as appendix I-12 are general balance sheet statements for BTL and NP Transport as of November 30, 1961, and for S&DT as of December 31, 1961.

Income statements of BTL for the years 1959, 1960, and the first 11 months of 1961 show total operating revenues of $15,873,191, $16,220,062, and $15,400,084, respectively, with concurrent net income of $814,587, $279,666, and a deficit in net income of $18,259, respectively.

Income statements of NP Transport for the years 1959, 1960, and the first 11 months of 1961, show total operating revenues of $3,482,768, $3,768,800, and $3,456,027, respectively, with concurrent net income of $111,487, $9,593, and $321,540, respectively.

Income statements for S&DT for the years 1960 and 1961, show total operating revenues of $120,345 and $95,843, respectively, with concurrent net income of $10,396, and a deficit in net income of $4,062, respectively.

THE TRANSACTIONS

General.

For technical reasons herein discussed the major transactions for which authority is sought to effect unification of the properties and franchises of applicants and enable them to operate as a single enterprise contemplate, in the order stated: (1) merger of Great Northern, Northern Pacific and Pacific Coast into New Company under terms and conditions of an agreement referred to herein as the Northern Lines merger, which would precede (2) merger of Burlington into New Company under terms and conditions of an agreement referred to herein as the Burlington merger, whereupon the separate corporate existences of Great Northern, Northern Pacific, Pacific Coast and Burlington would terminate, and (3) upon effectuation of the Northern Lines merger, lease by New Company of the properties and assets of SP&S for a pe-

riod of ten years upon terms and conditions of an indenture of lease referred to herein as the SP&S lease. It is anticipated that prior to the end of that term, consideration will be given to the question, whether, in the light of conditions then existing, the lease should be extended or the SP&S should be merged into New Company. No authority for merger of SP&S is sought at this time. All of the capital stock and bonds of SP&S are owned in equal amounts by Great Northern and Northern Pacific and, upon consummation of the unification proposed, will be owned by New Company.

Related transactions for which authority is sought as part and parcel of the proposed unification involve: (1) acquisition by New Company of sole or joint control, as the case may be, of carriers affiliated with or subsidiary (a) to Great Northern and Northern Pacific at the time of the Northern Lines merger and (b) to Burlington at the time of the Burlington merger, (2) acquisition by New Company of leasehold rights in respect of, all trackage rights over, and all joint ownership in and joint use of, any railroad line or lines and terminals incident thereto possessed by the merging carriers at the time of the merger dates, and by SP&S at date of effectiveness and for the term of the SP&S lease, (3) issuance of securities and assumption of obligations and liabilities of the merging carriers and SP&S in respect of securities in carrying out the provisions of the respective merger and lease agreements, (4) construction of those connections which constitute extensions for which authority is sought as described in appendix A, upon completion of which, some segments of the present lines would no longer be needed and authority is here sought to abandon those segments as described in appendix B. In both circumstances, requests for authority to extend and abandon are contingent upon approval of the principal transactions dealing with proposals to unify the described properties, and authority to abandon the described segments is contingent in each instance upon completion of the particular construction to which it is related.

Stock ownership by applicants in various subsidiaries and other companies as described in appendix E will be acquired by New Company as part of the unification.

It is advanced that the reason for the two mergers rather than a single merger is to permit the direct pledge of $70,000,000 principal amount of Burlington first and refunding series 2010 4 percent bonds under the new consolidated mortgage which New Company proposes to create upon consummation of the Northern Lines merger, and thus permit utilization of bonds secured by a first lien on Burlington property and now issuable under the Burlington first and refunding mortgage to strengthen directly and materially the proposed consolidated mortgage which is to be the New Company's future general refunding and financing medium. After the mergers, the consolidated mortgage also would be a lien on substantially all railroad properties theretofore owned by the merging carriers, as subsequently described.

Following consummation of the Northern Lines merger but prior to the Burlington merger New Company proposes to purchase from Burlington for cash at par and accrued interest, if any, said $70 million principal amount of Burlington bonds. Next, New Company will then execute its new consolidated mortgage on the railroad properties of the Northern Lines and pledge the new Burlington bonds thereunder. That can only be accomplished prior to merger of Burlington into New Company and not thereafter because upon merger of Burlington its property will become subject to the Great Northern general mortgage, which contains a covenant prohibiting the creation of debt secured by a lien prior to the lien of that mortgage on property subject thereto.

Subsequent to the Northern Lines merger and prior to merger of Burlington, it is proposed to satisfy the Northern Pacific refunding and improvement mortgage. In order to secure satisfaction of that mortgage, New Company would (1) issue and, with the consent to be first obtained of the holders of two-thirds of the Northern Pacific collateral trust bonds, pledge consolidated mortgage bonds under the Northern Pacific collateral trust indenture in order to secure the release of an equivalent principal amount of Northern Pacific refunding and improvement mortgage bonds then pledged under that indenture (there now being $71,500,000 principal

amount so pledged); (2) cancel and retire such refunding and improvement mortgage bonds when released from pledge; and (3) deposit with the trustee of the Northern Pacific refunding and improvement mortgage money sufficient to redeem at the redemption price of 110 plus accrued interest and redeem all of the then publicly held Northern Pacific refunding and improvement mortgage bonds (amounting to $17,632,000 as of December 31, 1960).

The Northern Pacific refunding and improvement mortgage is to be satisfied in order to remove an obstacle to merger of Great Northern, Northern Pacific and Burlington which is created by a provision in the Northern Pacific refunding and improvement mortgage, under which 829,337 shares of Burlington stock owned by Northern Pacific are pledged, which conflicts with a provision of the Great Northern general mortgage, under which 829,337 shares of Burlington stock owned by Great Northern are pledged. Under those provisions, upon merger of Burlington all of its property must be subjected to the lien of each mortgage. Because those requirements of the mortgages cannot both be complied with, one of the mortgages must be satisfied. There are outstanding under the Great Northern general mortgage a greater principal amount of bonds than under the Northern Pacific refunding and improvement mortgage, certain issues of the Great Northern general mortgage bonds are not redeemable prior to maturity, and certain of those issues bear lower interest rates than the outstanding Northern Pacific bonds. Accordingly, it has been determined to satisfy and discharge the Northern Pacific refunding and improvement mortgage. Upon accomplishment of that phase and upon subsequent merger of Burlington its property would become subject to the Great Northern general mortgage by reason of such provision thereof, and then to the lien of the new consolidated mortgage.

All of the outstanding capital stock of SP&S (which is owned by Great Northern and Northern Pacific) will be owned by New Company upon effectuation of the Northern Lines merger. The unification of the opera-

tions of SP&S will be accomplished by lease of all of the property and assets of SP&S to New Company for a term of ten years following accomplishment of the Burlington merger transaction. As of August 31, 1961, SP&S had outstanding $54,710,000 principal amount of its first mortgage 4 percent bonds due March 1, 1971, all of which are owned in equal amounts by Great Northern and Northern Pacific. Applicants anticipate that at or about the time of the maturity of such bonds, consideration will be given to the question of whether in the light of conditions then existing, the SP&S lease should be extended or the SP&S should be merged into New Company.

THE MAJOR TRANSACTIONS

The Northern Lines merger.

Pursuant to the terms of an agreement of merger dated January 26, 1961, between New Company and its directors, Great Northern and a majority of its directors, Northern Pacific and a majority of its directors, and Pacific Coast and a majority of its directors, and as approved by appropriate resolutions adopted by the boards of directors of New Company, Great Northern, and Northern Pacific on January 26, 1961, and by the board of directors of Pacific Coast on February 6, 1961, and by appropriate resolutions adopted by stockholders at meetings held by them, by affirmative vote of 73.81 percent (4,422,600 shares) of the outstanding shares of capital stock (6.64 percent, or 397,949 shares, voting against the proposals) of Northern Pacific on April 27, 1961, by affirmative vote of 81.03 percent (4,929,931 shares) of the outstanding shares of capital stock (0.17 percent or 10,491 shares, voting against the proposals) of Great Northern on May 11, 1961, by affirmative vote of 100 percent of the outstanding shares of capital stock of New Company on May 11, 1961, Great Northern, Northern Pacific, and Pacific Coast would be merged into New Company. The corporate parties to the agreement are sometimes referred to collectively as the constituent companies.

New Company would continue after the Northern Lines merger is effected as the surviving company, a Delaware corporation, exclusively. Its authorized capital stock would, on the Northern Lines merger date, be reclassified and increased from 200 shares without par value to 3,102,333 shares of preferred stock, par value $10 each, and 17,500,000 shares of common stock, no par value, and the outstanding shares of capital stock of Great Northern and Northern Pacific would be converted under the Northern Lines merger into capital stock of the New Company, as follows: (a) each share of capital stock of Great Northern outstanding in the hands of the public immediately prior to the Northern Lines merger date would be converted into one share of common stock and one-half share of preferred stock of the New Company, and (b) each share of capital stock of Northern Pacific outstanding in the hands of the public immediately prior to the Northern Lines merger date would be converted into one share of common stock of the New Company. As more particularly discussed under related transactions elsewhere herein, New Company would issue the requisite number of shares of its preferred and common stock, and assume all obligations and liabilities of Great Northern and Northern Pacific in respect of securities, in carrying out the Northern Lines merger agreement. Coincidentally with accomplishment of the Northern Lines merger, all shares of the capital stock of New Company owned by Great Northern and Northern Pacific, all shares of capital stock of Pacific Coast, all treasury shares of the constituent corporations and all directors' qualifying shares would be retired and cancelled and no shares of capital stock or other securities of New Company would be issued in respect thereof, and the separate corporate existences of Great Northern, Northern Pacific, and Pacific Coast would be terminated upon the Northern Lines merger date.

Consummation of the Northern Lines merger thereunder is contingent upon (1) the filing of the merger agreement, which filing shall fix the date of and constitute the effective date of the merger, duly certified and acknowl-

edged, in the office of the Secretary of State of Delaware, in compliance with Delaware law, and (2) the recordation of the agreement in the office of the recorder for the County of New Castle, Del., if prior thereto the agreement (a) shall have been approved by the unanimous vote of the stockholders of New Company, a vote of the holders of two-thirds of the outstanding stock of Great Northern, a vote of the holders of two-thirds of the outstanding stock of Northern Pacific, and a vote of the holders of three-fourths of the outstanding stock of Pacific Coast, and (b) shall have been approved and authorized by this Commission, upon terms and conditions provided in the agreement.

The Northern Lines merger agreement provides that if this Commission imposes terms or conditions to its approval of the merger transaction, such terms and conditions, if accepted by resolution of the board of directors of Great Northern and Northern Pacific, should be deemed binding as if included in the agreement, and no further action of stockholders of any of the constituent corporations would be required; but such boards may not accept any terms or conditions which vary from the provisions of the agreement in any manner materially and adversely affecting the stockholders of Great Northern and Northern Pacific.

The Northern Lines merger agreement further provides that upon the effective date of the Northern Lines merger, New Company would become possessed of all the rights, privileges, powers, and franchises (except any franchise to be a corporation of any State other than the State of Delaware), would be subject to all the restrictions, disabilities and duties of the constituent corporations, and all and singular, the rights, privileges, powers and franchises of each of them, and all properties and all debts due any of them would be vested in the New Company and would be thereafter as effectually the property of New Company as such were formerly the property of any of the constitutent corporations and without further act or deed New Company would succeed to title to the real estate interests of each company, would be responsible and liable for all the debts, liabilities and

duties of the constituent corporations and would be substituted in their stead as the party of interest in any existing claims or actions by or against either of the constituent corporations, assume all obligations and liabilities of Great Northern and Northern Pacific in respect of securities outstanding; and rights of creditors and all liens upon properties of any of constituent corporations would be preserved unimpaired and all debts and liabilities of constituent corporations would attach to New Company and may be enforced against it to the same extent as if incurred by it. New Company would assume all contracts, mortgages, deeds of trust and indentures made by Northern Pacific, Great Northern, or Pacific Coast or their predecessors and other supplements and amendments thereto and all bonds and other obligations secured thereby.

The Northern Lines merger agreement further provides that neither Northern Pacific nor Great Northern, without the consent of the other, shall, prior to merger date of the termination of the agreement (a) declare dividends in excess of $2.60 per share per annum in the case of Northern Pacific, and $3.00 per share per annum in the case of Great Northern, or declare any stock dividend or make any other distribution on its capital stock, or make any purchase thereof at a price in excess of the then current market price, or (b) issue or sell any shares of its authorized but unissued capital stock (except that Northern Pacific may issue shares to satisfy restricted stock options outstanding as of July 15, 1960) or any security convertible into capital stock, or issue or grant any option or warrant to purchase capital stock except those issued or granted pursuant to its restricted stock option plan in effect on January 26, 1961, each to have at Northern Lines merger date in its treasury shares of its own stock at least equal in number to the number of shares then optioned under its plan, except in the case of Northern Pacific, shares optioned on or before July 15, 1960; or (c) sell any of its treasury stock except to satisfy restricted stock options.

The Northern Lines merger agreement further provides that New Company will take such action as may

be appropriate so that after the Northern Lines merger date (a) holders of option agreements entered into pursuant to the Northern Pacific restricted stock option plan shall be entitled to purchase one share of New Company common stock for each share of Northern Pacific stock subject to such option agreements, for the same price and upon the same terms and conditions stated in such option agreements, and (b) holders of warrants issued pursuant to Great Northern restricted stock option plan shall be entitled to purchase one share of New Company common stock and one-half share of New Company preferred stock (or such other number of shares of such common stock or preferred stock or both or on such terms as shall be required to avoid modification of the options within the meaning of the Internal Revenue Code) for each share of Great Northern stock subject to such warrants, for the same aggregate price and upon the same terms and conditions (subject to appropriate provision with respect to fractional shares and except as such terms and conditions may be altered avoid modification of the options as aforesaid) stated in such warrants. It further provides that following the Northern Lines merger date no options would be granted under the Northern Pacific restricted stock option plan or the Great Northern stock option plan.

The parties to the Northern Lines merger agreement by its terms reserve the right to terminate and abandon the agreement prior to its becoming effective: (1) by mutual consent of the boards of directors of Great Northern and Northern Pacific at any time; (2) in the event the board of directors of either Great Northern or Northern Pacific find unacceptable any terms or conditions imposed by the Commission upon its approval of the merger, or (3) by the board of directors of either Great Northern or Northern Pacific if there have not been received prior to January 26, 1964, (a) all approvals of public authorities necessary to consummation of the merger, (b) all approvals of public authorities and all consents of stockholders and bondholders necessary for (i) the merger of Burlington into New Company upon terms and conditions contained in an agree-

ment of merger between Burlington and New Company of the same date herein referred to as the Burlington merger agreement, subsequently discussed, (ii) lease to the New Company of all the properties of SP&S for a term of 10 years, (iii) execution of a consolidated mortgage covering all or substantially all of the railroad properties of the New Company, (iv) the issuance of bonds pursuant to the consolidated mortgage and pledge thereof in substitution for the Northern Pacific refunding and improvement mortgage bonds pledged under the Northern Pacific collateral trust indenture, dated October 1, 1954, and (v) the modification of the indenture to permit substitution of consolidated mortgage bonds as collateral thereunder and to modify said indenture by deletion therefrom of certain sections contained therein, all as subsequently discussed herein.

Pursuant to resolution adopted at a meeting of holders of more than two-thirds of the principal amount of bonds outstanding under Northern Pacific collateral trust indenture, dated October 1, 1954, held April 20, 1961, there was approved an amendment of the indenture to be effected by a supplemental indenture permitting the substitution of New Company's consolidated mortgage 4 percent bonds, series A, due 1984, for Northern Pacific refunding and improvement mortgage bonds, series E, due July 1, 2047, as collateral security thereunder, and the elimination of certain sections of the collateral trust indenture.

The Northern Lines merger agreement is in conventional form to effect a statutory merger under Delaware law. In the statutory merger, the surviving company, here New Company, a party to the agreement and an applicant, organized in Delaware to become the surviving corporation in the unification, now a subsidiary of Great Northern and Northern Pacific would remain so until the Northern Lines merger is effected, whereupon it would by operation of law become the corporate successor of Great Northern, Northern Pacific and Pacific Coast, which would cease to exist as separate corporations, would issue its stock for the assets, properties and franchises of the companies being liquidated and assume

all of their obligations. Their properties and franchises would pass to New Company by operation of law without any conveyance other than the merger agreement. The by-laws of New Company as in effect immediately prior to the Northern Lines merger date are to constitute the by-laws of the New Company upon the Northern Lines merger date and thereafter until duly altered or amended. New Company's stockholders would be the former stockholders of Great Northern and Northern Pacific, and the presently outstanding shares of New Company and Pacific Coast would be retired and cancelled. However, New Company may not acquire any control over the capital stock of the merging corporations, or any control or dominion over their properties and franchises until the Northern Lines merger is effected. Moreover, it could not acquire control of the same properties and franchises or of the stock of the corporations owning them prior to the merger, for the reason that both consolidation and merger differ from those cases involving merely an acquisition of control.

The Burlington merger.

Pursuant to the terms of another agreement of merger also dated January 26, 1961, entered into between New Company and its directors and Burlington and a majority of its directors, as approved by appropriate resolutions of their respective boards of directors on January 26, 1961, and as approved by appropriate resolutions adopted by stockholders at meetings held by them, by affirmative vote of 100 percent of the outstanding shares of capital stock of New Company on May 11, 1961, and by affirmative vote of 99.5 percent (1,700,463 shares) of the outstanding shares of capital stock (0.02 percent or 310 shares voting against the proposal) of Burlington on May 3, 1961, Burlington would be merged into New Company. The corporation parties to the agreement are sometimes referred to as the constituent corporations.

New Company would continue after the merger as the surviving company, a Delaware corporation exclusively.

Its authorized capital stock on the Burlington merger date, as on the Northern Lines merger date, would be 3,102,333 shares of preferred stock, par value $10 each, and 17,500,000 shares of common stock, no par value, and the outstanding shares of capital stock of Burlington in the hands of the public would be converted under the Burlington merger agreement into capital stock of New Company, as follows: each share of stock of Burlington outstanding immediately prior to the Burlington merger date (other than such shares as are then owned by New Company) would be converted into three and one-quarter shares of common stock of the New Company. All shares of the capital stock of Burlington owned by New Company and any treasury shares of Burlington would be retired and cancelled and no shares of capital stock or other securities of New Company would be issued in respect thereof, and the separate corporate existence of Burlington would be terminated on the Burlington merger date.

Consummation of the Burlington merger is contingent upon (1) the filing of the merger agreement, which filing shall fix the date of and constitute the effective date of the merger, duly certified and acknowledged in the office of the Secretary of State of Delaware, (2) the recordation of the agreement in the office of the recorder of the County of New Castle, Del., if (a) the agreement shall have been approved by the stockholders of each of the constituent companies, (b) the Burlington merger shall have been approved and authorized by this Commission upon terms provided in the agreement, and (c) prior to such filing of the agreement, the Northern Lines merger agreement shall have become effective, and (3) sale by Burlington to New Company of $70,000,000 principal amount of its first and refunding mortgage series of 2010 4 percent bonds, as subsequently described.

The agreement provides that if the Commission imposes terms and conditions to its approval of the merger transaction such terms and conditions, if accepted by the boards of directors of Burlington and New Company, would be deemed binding as if included in the agreement and no further action of stockholders of either corpora-

tion would be required; but the boards of directors may not accept any term or condition which varies from the provisions of the agreement in any manner materially affecting the stockholders of Burlington or New Company.

The Burlington merger agreement contains similar provisions in respect of merging of assets and assumption of liabilities of Burlington into New Company on the Burlington merger date as previously described under the Northern Lines merger.

The Burlington merger agreement further provides (1) that after the Northern Lines merger agreement shall become effective, Burlington will, subject to necessary approvals of regulatory authorities, sell to New Company $70,000,000 principal amount of its first and refunding mortgage series of 2010 4 percent bonds, to be issued under and pursuant to Burlington's first and refunding mortgage dated February 1, 1921, at a price in cash of $70,000,000, plus accrued interest (if any) on such bonds to date of sale, such sale to be made prior to the merger date as New Company may appoint but not before the effectiveness of the merger provided for in the Northern Lines merger agreement, and such sale by Burlington would be a condition to the obligation of New Company to consummate the Burlington merger agreement, and (2) that New Company would purchase such bonds and immediately thereupon pledge same under New Company's new consolidated mortgage to be executed and delivered to it, subsequently discussed herein with more particularity. In that connection, in the event of merger, the $17,632,000 principal amount of Northern Pacific refunding and improvement bonds series A would be redeemed and cancelled.

The parties to the Burlington merger agreement by its terms reserve the right to terminate and abandon the agreement, (1) by mutual consent of the boards of directors of Burlington and New Company in the event any term or condition imposed by the Commission upon approval of the merger transaction shall be unacceptable to either of said boards, and (2) by the board of directors of either Burlington or the New Company, if there

have not been received prior to January 26, 1964, all approvals of public authorities necessary for the consummation of the merger of Burlington into New Company.

The SP&S lease.

Under the terms of a proposed indenture of lease, between SP&S and New Company, which was approved by the boards of directors of Great Northern, Northern Pacific and New Company on January 26, 1961, and by the board of trustees of SP&S on February 7, 1961, and by appropriate resolution adopted by the stockholders of New Company at a meeting held May 11, 1961, and by appropriate resolution adopted by the stockholders of SP&S on May 10, 1961, SP&S would lease all of its properties and assets, including investments, current assets and after-acquired property to New Company for a term of 10 years from and after the effective date of the lease, except SP&S's franchises to be a corporation and its corporate books and records, to the extent required for its proper performance of the terms and conditions of the lease, such lease of properties and assets subject to (a) lien of SP&S first mortgage, dated March 1, 1911, and all amendments and supplements thereto and extensions thereof, and the lien of any other mortgage or mortgages which may, with the written consent of the lessee, be placed on the leased property on any part thereof, in replacement of the said first mortgage, after the effective date of the lease; (b) the lien of SP&S's equipment trust and conditional sale agreements specified in the lease; and (c) all other mortgages, trusts and other encumbrances upon or affecting the demised premises existing on the effective date of the lease or thereafter created or entered into by SP&S with the consent of lessee.

The lease indenture further provides that lessee would pay as rent for the lease: (a) all obligations reasonably incurred by lessor to preserve the franchises and corporate existence of lessor; (b) all taxes, assessments, and other governmental charges (with right of reim-

bursement from lessor for those chargeable to capital account) lawfully levied or assessed against the leased property or the earnings of income thereof, or against the lessor or the lessor's interest in the lease or the income received by lessor, or paid for its account, under the lease; (c) all rental and other charges (with right of reimbursement from the lessor for those chargeable to capital account) for which lessor may be liable in respect of trackage and other rights included in the leased property or acquired by the lessor with the approval of the lessee; (d) all interest, including current amortization of discount and expense, accruing on bonds, notes or other obligations in respect of which the lessor is liable, except such obligations as are owned by the lessee or its successors or nominees; and (e) amounts payable as pension benefits under the lessor's existing pension plan to persons, and widows of such persons, on or entitled to be on its pension rolls on the effective date of the lease.

Additionally, lessee would pay, or account for amounts equal to deductions or similar allowances which would pay, or account for amounts equal to deductions or similar allowance which lessee is entitled to claim for each calendar year under the Internal Revenue Code for depreciation, depletion or amortization in respect of the leased property, for retirement or abandonment of depreciable, depletable or amortizable property constituting part of the leased property solely on account of casualty, obsolence, or other cause not adequately provided for in determining the rates of depreciation, depletion or amortization, and for retirement or abandonment of non-depreciable leased property.

Provision is made for equitable apportionment between lessee and lessor of the foregoing items for rent and additional rent in respect of periods prior to, during and subsequent to the form of the lease.

The lease indenture further provides that lessee would be obligated to operate and maintain the leased property at its own expense, and to perform all covenants, terms, and conditions to be performed by the lessor under any lease, trackage or other agreement, mortgage, indenture

or other instrument in force at the lease date or thereafter entered into by lessor with approval of lessee. Lessee would also be obligated to pay for the account of lessor, with right of reimbursement, all liabilities arising out of lessor's operation of the leased property prior to the lease date and the principal when due on all bonds, notes and other obligations or evidences of indebtedness in respect of which lessor is liable other than those held by lessee.

The lease indenture further provides that lessee may, for the account of lessor with right of reimbursement, add to, better improve or extend the leased property, and acquire other property, of whatever character, which lessee should deem in the lessor's interest for lessor to acquire, and subject to account to lessor for the net cash proceeds, abandon, retire, sell, exchange or otherwise dispose of any of the leased property. Subject to certain provisions for account to lessor, lessee may exercise all right of lessor with respect to all securities and investments of lessor included in the leased property, including the right to receive all dividends and interest thereon, to exercise voting rights, and to dispose of or encumber such property.

It further provides that for the purpose of refunding obligations of lessor, and financing or reimbursing lessee for payments of principal and sinking funds on obligations of lessor, capital expenditures in respect of the leased property, and other expenditures for the account of lessor, the latter would issue and deliver to lessee at its request bonds, notes or other obligations or evidence of indebtedness, subject to any necessary governmental approval; also for joinder by lessor in extensions or other modifications of bonds, notes or other evidences of indebtedness which in the judgment of lessee can be procured on terms reasonable and in the interest of lessor.

Provision is made for surrender and delivery of the leased properties to lessor upon termination of the lease by lapse of time or default, for termination upon default under any mortgage or other lien on the leased property requiring that a lease of lessor's property shall be terminable on such default, and for an accounting and settlement between the parties.

Applicants decided to include SP&S in the unification proposal by a short term lease of its properties rather than by merger into New Company at this time because it was concluded that merger would result in the extinquishment of $54,710,000 principal amount of SP&S first mortgage bonds, all of which are held in equal proportions by Great Northern and Northern Pacific, and the possibility of substantial tax liability. Applicants' proposal contemplates that the bonds be kept alive for at least ten years because it is believed they would be valuable assets to New Company in the event a public marketing of bonds should become desirable. Moreover, it was determined that a ten-year lease of the properties of SP&S would permit consideration be given to disposition of the bonds in the light of conditions existing after unification and later determination to be made as to whether to merge SP&S into New Company at end of the ten-year period or enter into a long-term lease of its properties.

THE RELATED TRANSACTIONS

Acquisition of interests in subsidiaries or affiliates.

Coincidentally with consummation of the Northern Lines merger New Company would acquire through stock ownership, such sole or joint control, as the case may be, of other carriers as well as all direct or indirect interests which those carriers have in other carriers or their properties, and other properties, which Great Northern and Northern Pacific might hold immediately prior to consummation of that transaction.

Similarly, with subsequent consummation of the Burlington merger, and coincidentally therewith, New Company would acquire through stock ownership, such sole or joint control, as the case may be, of other carriers as well as direct or indirect interests which those carriers have in other carriers or their properties, and other properties, which Burlington might hold immediately prior to consummation of that transaction.

Coincidentally with consummation of the SP&S lease transaction, New Company would acquire for the dura-

tion of the lease term, such sole or joint control, as the case may be, of other carriers as well as all direct or indirect interest which those carriers have in other carriers or their properties, and other properties, which SP&S might hold immediately prior to consummation of the lease transaction. In addition, New Company would also acquire on the effective dates of the respective merger transactions and on the date of the lease transaction, all the direct and indirect interest which those carriers have in other carriers and other significant companies.

As previously indicated, the measure of control or ownership exercised by applicants Great Northern, Northern Pacific and Burlington over carriers subject to the Act, transportation or terminal service companies, and other significant companies, as of December 31, 1961, is shown in appendix E, and the activities of those carriers in which New Company would acquire as part and parcel of the major transactions, a proprietary interest have been described.

The market value or estimated value of securities owned by each of the applicants as of December 31, 1961, to be acquired by New Company as owner or lessee is set forth in appendix J.

Acquisition of Motor Carrier Operations.

A significant aspect of the proposal in the aggregate involves the motor carrier subsidiaries of applicants and motor carrier operations related thereto. Following approval and consummation of the Northern Lines merger transaction, New Company would acquire (1) among the assets and properties of Great Northern (a) certificates of public convenience and necessity in the name of Great Northern authorizing the conduct of motor common carrier operations in interstate or foreign commerce in the transportation of property and passengers, which operations are described elsewhere herein, and (b) the capital stock of S&DT, a wholly-owned subsidiary motor common carrier of property, the operations in interstate or foreign commerce of which are also described else-

where herein, and (2) among the assets and properties of Northern Pacific, the capital stock of NP Transport, a wholly-owned subsidiary motor common carrier of property and passengers, the operations in interstate or foreign commerce of which are described elsewhere herein. Following approval and consummation of the Burlington merger transaction, New Company would acquire among the assets of Burlington (a) certificates of public convenience and necessity in the name of Burlington authorizing the conduct of motor carrier operations in interstate or foreign commerce in the transportation of property and passengers, which operations are described elsewhere herein, and (b) the capital stock of BTL, a wholly-owned subsidiary motor common carrier of property, the operations in interstate or foreign commerce of which are described elsewhere herein.

As indicated, two of the applicants, Great Northern and Burlington, and three subsidiaries of applicants, S&DT (Great Northern), NP Transport (Northern Pacific), and BTL (Burlington) conduct operations in interstate or foreign commerce as motor common carriers under certificates issued by this Commission. No extension of motor carrier operations or operating rights is sought herein and no merger or consolidation of the motor carrier subsidiaries or operations is contemplated by the proposal. Following unification, New Company, as the surviving parent company, would continue the motor carrier services and operations authorized under the outstanding certificates of Burlington and Great Northern unchanged, except that New Company's name should be reflected in lieu of the predecessor company, and intend they be subject to the same rights and restrictions now in force. New Company would own the capital stock of the three motor carrier subsidiaries, which would continue their respective operations unchanged as at present. While little or no consideration was given to the motor carrier operations when the applicants' unification plan was formulated, since the program of unification was primarily designed to consolidate the railroad properties, no economies or savings are attributed in any manner to such motor carrier operations.

The motor carrier rights of Burlington are limited. The routes do not connect with each other or with Great Northern's routes. Burlington's motor carrier rights were obtained by the railroad at the time certain train service was removed. Some authorize the transportation of passengers, mail, express and baggage; others authorize the handling of head end traffic or, in some instances, general commodities. Burlington provides some of those services with its own employees. Some of those services are provided by its wholly owned subsidiary BTL under contract. Most of Burlington's certificates are restricted to service which is auxiliary or to supplemental of rail service.

Great Northern's operations as a motor common carrier of general commodities generally parallel its lines of railroad in Montana east and south of Whitefish, with a few scattered operations in Oregon, North Dakota and Minnesota, and as a motor common carrier of passengers in Montana and North Dakota. Most of Great Northern's certificates are restricted to service which is auxiliary to or supplemental of rail service.

The motor carriers rights now held by Burlington and Great Northern would be acquired directly by New Company through the two merger proceedings as part of the assets of those companies. The Burlington rights do not authorize service nor do the operations connect at any point served by Great Northern—as they involve operations at widely different and unrelated areas.

The capital stock of the three subsidiaries BTL, NP Transport and S&DT, wholly owned by Burlington, Northern Pacific and Great Northern, respectively, are part of the general properties to be acquired by New Company as reflected in the application for authority herein whereby New Company would acquire control of carriers subsidiary to Great Northern, Northern Pacific and Burlington. No change in the separate corporate identity of those subsidiaries of the service performed by them is contemplated.

The scope of the operating authorities of the three subsidiary motor carriers has been described. The authority held by S&DT is limited to service which is aux-

iliary to or supplemental of rail service. Virtually all of BTL's operating authority is unrestricted in that respect. The operations of NP Transport in Idaho, Washington, Oregon and a small segment of route in Montana west of Missoula are subject to restriction of service auxiliary to or supplemental of rail service, but the remainder of NP Transport's operating authority, with some exceptions, is unrestricted. NP Transport's operating authority, unlike those of BTL and S&DT include rights to transport passengers.

The routes of the three subsidiary motor carriers are geographically separated almost in entirety. However, there are several instances where their routes are duplicated. The routes of BTL and NP Transport coincide between Billings and Bridger, Mont., over U. S. Highway 10-310, 44 miles. There is no duplication of service, however, because BTL's operations involve service between Denver and Billings with no service to or from intermediate points between Bridger and Billings, whereas NP Transport's operations involve local service to or from intermediate points. The routes of Great Northern and NP Transport coinside (1) between Butte and Helena, Mont., over Montana Highway 91, 66 miles, but NP Transport is not authorized to serve intermediate points, whereas Great Northern's operations are restricted, including service to intermediate rail stations, and (2) between Kalispell and Somers, Mont., over U. S. Highway 93, 9 miles, but NP Transport authority is unrestricted between those points as part of a through route between Sidney and Kalispell, Mont., whereas Great Northern authority between Somers and Kalispell is restricted to service which is auxiliary to or supplemental of rail service. Because of the difference in operating authorities and service performed thereunder, the traffic patterns of the three companies between the points are dissimilar. Following unification, each company would continue to operate its own equipment over its own routes and under its own operating authority. No enlargement of operating rights would result. The limited duplication of operations and that over specific common routes is such that the limited duplication of service

resulting from common control of the several carriers is not sufficient to warrant withholding of the authority sought. Compare *Cochrane—Control—Cochrane Transp. Co.*, 80 M.C.C. 691 (695).

Reference has previously been made to the financial condition of the motor carrier subsidiaries and results of their operations for prescribed recent periods.

As indicative of the extent to which Great Northern has conducted operations under its motor carrier operating rights the evidence shows that during the month of December 1961, of a 20 percent sample of its Montana highway operations, it transported 304 shipments aggregating 237,771 pounds of a wide variety of commodities; of a 20 percent sample of its Breckenridge, Minn.-Fargo, N. Dak., highway operations, it transported 27 shipments aggregating 10,990 pounds of a wide variety of commodities, and of a 100 percent sample of its North Dakota highway operations (Grand Forks-Grand Forks Air Force Base, Minot-Minot Air Force Base, and Coteau-Northgage) it transported 24 shipments aggregating 7,718 pounds of a wide variety of commodities.

As indicative of the extent to which Burlington has conducted operations under its motor carrier operating rights, the evidence adduced shows the performance of operations and adequate and continuous service thereunder except under those rights covered by its certificate issued in No. MC-66581 (Sub-No. 5). Under that certificate, it acknowledges that no service has been performed since discontinued on December 29, 1961, and no evidence of need for the continuance of such operations is presented. Such operating rights under No. MC-66581 (Sub-No. 5) are clearly dormant, should be cancelled upon consummation of the transaction, and the findings will be appropriately conditioned. Compare *Cooper's Exp. Inc.—Purchase—Fargo Transp. Inc.*, 70 M.C.C. 343, and *Roadway Exp. Inc.—Purchase—Diamond States M. Frt., Inc.*, 58 M.C.C. 185.

As indicative of the nature of and extent to which the three motor carrier subsidiaries have conducted operations under their respective operating rights evidence was adduced showing that during a selected day (Octo-

ber 20, 1961) BTL transported over its routes 4,930 shipments aggregating 4,860,980 pounds of a wide variety of commodities within the framework of and under its operating rights; that during a selected day (October 20, 1961) NP Transport transported over its routes 432 freight shipments aggregating 117,768 pounds of a wide variety of commodities within its authority; and that during the month of November, 1961, a five percent sample of one month's shipments handled by S&DT reflects operations in the transportation of 132 shipments aggregating 129,563 pounds of a wide variety of commodities within its authority. In each instance of a showing of past operations while the evidence is not detailed as to a showing to and from every point authorized under the operating rights involved it does reflect that the operations performed have been of a substantial character and indicate continuous operations. New *Dixie Lines, Inc.—Control—Jocie Motor Lines, Inc.*, 75 M.C.C. 659, 666.

In the event the proposed transactions are approved and authorized, applicants request appropriate authorization to transfer to New Company the motor carrier operating rights of Great Northern and Burlington to the extent necessary to permit continuation of present motor carrier operations of Great Northern and Burlington. Likewise, where in the certificates issued to the motor carrier subsidiaries of Great Northern, Northern Pacific and Burlington the names of those railroads are mentioned, the name of New Company should be inserted in lieu thereof.

Acquisition of trackage rights.

As previously indicated, Great Northern, Northern Pacific, Burlington and SP&S each hold trackage rights to operate over lines of other railroads and utilize jointly with other lines common terminals or passenger station facilities. New Company would, under the transactions here in addition, on the day of merger in each of the merger transaction, and on the day of lease on the date the lease transaction is consummated, acquire among the assets of the named carriers from the other applicant

companies and in the case of the SP&S during the term of the lease, such property rights. Moreover, other agreements in effect permit use by other lines of portions of the lines of certain applicants, the obligations of which New Company would assume. All such trackage rights and joint use agreements are set forth in capsule form in appendix D and the terms of those agreements, covering such rights generally are in standard form and provide for payments on a user basis. No question is raised in respect of terms of such agreements and the terms long in effect may be deemed to be just and reasonable in all respects.

Securities transactions.

Issuance of stock. As previously indicated, New Company has outstanding 200 shares of common capital stock, no par value, owned 100 shares each by Great Northern and Northern Pacific. Under the Northern Lines merger agreement, and subject to consummation of the transaction covered thereby, those shares would be retired and cancelled upon accomplishment of that merger transaction and the authorized capital stock of New Company would be reclassified and increased to 3,102,333 shares of preferred stock, par value $10 each, and 17,500,000 shares of common stock, no par value, for the issue of which New Company seeks authority under section 20a.

Preferred stock. The preferred stock would be fully paid and non-assessable, have a par value of $10 per share, and be entitled to fully cumulative dividends, payable quarterly, at the rate of 5½ percent per annum, and no more, when and as declared by the board of directors out of funds legally available therefor, and to the benefit of cumulative mandatory sinking fund for its retirement, and no dividends would be declared or paid on the common stock unless dividends at the rate of 5½ per cent per annum, and no more, including arrearages, have been paid or declared, and funds sufficient to pay the same have been set aside for that purpose, and the requirements of the mandatory sinking fund with re-

spect to preceding calendar year and all deficiencies, if any, in the mandatory sinking fund for prior calendar years have been satisfied.

On and after the fifth year following accomplishment of the Northern Lines merger and continuing so long as any preferred stock is outstanding. New Company, as and for a mandatory sinking fund, for said preferred stock, out of net assets legally available therefor after payment of dividends on the preferred stock, would retire shares of the preferred stock at an annual rate of 4 percent of the total par value of such preferred stock issued on the merger through redemption or cancellation of such shares of preferred stock theretofore purchased by it at or below par value plus accrued dividends, (such purchase shares to be valued for sinking funds purposes at par), or both. New Company may at its election, (any deficiency in the mandatory sinking fund for prior year having been made up), as and for an optional sinking fund in any one or more of such calendar years, so to redeem or cancel shares of such preferred stock theretofore purchased by it, or both, up to but not in excess of an additional 4 percent of the total par value of the preferred stock issued on the merger, and the aggregate of amounts by which mandatory sinking fund requirements have been so anticipated in any year or years may be credited against such sinking fund requirements for subsequent years; provided that in no event would New Company be relieved for more than two consecutive calendar years from the mandatory sinking fund requirement of purchasing and cancelling or of redeeming, or both, in each calendar year 4 percent of the total par value of preferred stock issued on the merger. Preferred stock would be redeemable for sinking funds purposes at par plus accrued dividends.

New Company may at its option redeem the preferred stock on and after the fifth year after Northern Lines merger consummation date at the following percentages of par plus accrued dividends thereon: In the first two years thereafter, 105 per cent; in the next two years, 104 percent, in the next two years, 103 percent; in the

next two years, 102 per cent; in the next two years, 101 percent, and thereafter, 100 percent.

In the event of liquidation preferred stockholders would be entitled to receive before any payment on the common stock the then applicable optional redemption price previously described under certain conditions, otherwise its par value plus accrued dividends. New Company may not voluntarily liquidate without approval of the holders of a majority of the preferred stock.

At any time when dividends are in arrears on the preferred stock, New Company may not redeem less than all of the preferred stock without approval of the holders of two thirds of the preferred stock, or purchase any preferred stock except upon offer to all holders of preferred stock. Holders of preferred stock would not be entitled to vote on any matter, except as provided by the laws of Delaware, and except in event dividends are in arrear in aggregate amount equal to six quarterly dividends, in which event holders of preferred stock would be entitled, voting as a class, to elect two directors at the next annual meeting, which voting rights would continue until such time as such arrearages have been paid, and New Company may not authorize the issue of any stock entitled to dividends to share in liquidation in priority to the preferred stock, and may not otherwise amend its certificate of incorporation in any way adversely affecting interests of preferred stockholders without approval by holders of two-thirds of the preferred stock, but no vote of the preferred stock would be required to increase the authorized amount of preferred stock or create one or more classes of preferred stock so long as such class or classes rank subordinate to the preferred stock either as to dividends or liquidation.

Common stock. The common stock of New Company proposed to be issued under the merger agreements would be fully paid and non-assessable, entitled to dividends, subject to the previously described conditions concerning the preferred stock, when and as declared by the board of directors of New Company, out of funds legally available therefor, and entitled to one vote per share for directors and on all other matters.

Upon the Northern Lines merger consummation date, each share of Great Northern stock then outstanding in the hands of the public would be converted into one share of common stock and one-half share of preferred stock of New Company, and each share of Northern Pacific stock then outstanding in the hands of the public would be converted into one share of common stock of New Company. No new securities would be issued in respect of the shares of common stock of Pacific Coast. No fractional shares of New Company's preferred stock or scrip certificates therefor would be issued in respect of conversion of the shares of Great Northern common stock, but in lieu thereof provision is made to enable stockholders entitled to fractional interest to either sell such fractional interest or purchase such additional fractional interest necessary to entitle such stockholder to a full share of preferred stock. No new securities would be issued in respect of Great Northern's common stock then held in its treasury, or in respect of directors' qualifying shares. New Company would reserve out of its authorized capital stock (a) sufficient shares of its common stock and preferred stock to satisfy options granted under Great Northern's restricted stock option plan, and (b) sufficient shares of its common stock to satisfy options granted under the Northern Pacific restricted stock option plan, and, in each case, which may be outstanding on the Northern Lines merger consummation date.

Upon the Burlington merger consummation date, each share of Burlington common stock outstanding in the hands of the public would be converted into three and one-quarter shares of common stock of New Company. No new securities would be issued in respect of shares of Burlington common stock owned by Great Northern and Northern Pacific or then held in Burlington's treasury. No fractional shares of New Company's common stock or scrip certificates therefor would be issued in respect of Burlington common stock. In lieu thereof, fractional interests would be treated similarly so that provided for the preferred stock issuable upon conversion of Great Northern common stock.

Under the rate of conversion set out in the application, the following schedule sets forth the number of shares of common and preferred stock required to be issued to satisfy the terms of the merger agreements:

	Number of shares outstanding as of August 31, 1961	To be exchanged for:	
		Common	Preferred
Great Northern	6,073,135	6,073,135	3,036,568
Northern Pacific	5,993,684	5,993,684	—
Burlington	48,033	156,107	—
Total	12,114,852	12,222,926	3,036,568

The above indicated shares of common and preferred stock do not include the number of shares required to satisfy the outstanding stock options issued under the restricted stock option plans of the Northern Lines. The subject application requests authority under section 20a to issue additional shares of common and preferred stock as may be required to be issued upon exercise, subsequent to merger, of restricted stock options, issued under the restricted stock option plans of the Northern Lines, outstanding as at the time of merger. As of August 31, 1961, 212,227 shares of common stock and 56,075 shares of preferred stock must be reserved for issuance against the outstanding options. The maximum number of shares required as of August 31, 1961, is as follows:

	To be issued	Reserved	Maximum
Common stock	12,222,926	212,227	12,435,153
Preferred stock	3,036,568	56,075	3,092,643

Issuance of bonds. In the proposed program of unification, there are presented two separate and distinct requests for authority to issue bonds; one by Burlington, the other by New Company. That situation is the result of the nature of the proposal in the aggregate, the fact that looking to unification it is contemplated it would be achieved through, inter alia, two separate merger transactions rather than a single consolidation vehicle, and is thus designed to enable carrier applicants

to simplify a present thorny problem of conflict of liens that would otherwise attach to the Burlington properties if merged concurrently with the Northern Lines merger.

Subsequent to consummation of the Northern Lines merger, and prior to consummation of the Burlington merger and execution of the supplemental indenture whereby New Company would assume the Burlington mortgage, Burlington would issue and sell to New Company $70,000,000 principal amount of its first and refunding mortgage series of 2010 4 per cent bonds. These bonds would be issued under and secured by Burlington's first and refunding mortgage, dated as of February 21, 1921, under which The First National City Bank of New York and Jacob M. Ford, II, are trustees, in part for the surrender for cancellation of $10,140,000 principal amount of first and refunding mortgage 4½ per cent bonds, series of 1970, due August 1, 1970, and $19,729,000 principal amount of first and refunding mortgage 4 per cent bonds, series of 1998, due February 1, 1998, now held in Burlington's treasury, and the balance of $40,131,000 on account of additions and betterments to the property subject to the lien of the mortgage.

The Burlington bonds would be dated on the interest payment date next preceding the date of authentication, would bear interest at 4 per cent per annum payable semiannually on the first days of February and August of each year, would mature on the first day of August, 2010, would be issued in the principal amount of not to exceed $70,000,000, would be issued as coupon bonds in the denomination of $1,000 or as registered bonds without coupons in denomination of $1,000 or any multiple thereof, interchange able as to form, would be payable at the office or agency of Burlington in New York, and would be redeemable before maturity on any interest date on nine weeks' published notice at their principal amount and accrued interest. No sinking fund would be provided for the redemption of payment of the series 2010 Burlington bonds or any part thereof. The series of bonds would not be converted into shares of capital stock of Burlington. The sale of the bonds would

be made for cash at par and accrued interest, if any. New Company expects to have available sufficient current funds in the form of cash and government bonds to effect the purchase. It does not anticipate that it would be required to resort to borrowing, but if that circumstance becomes necessary, although it has no present commitment, a short term bank loan would be arranged with prior approval of the Commission, if required. While New Company anticipates no difficulties in arranging for short term financing of that nature, should it become necessary, such borrowing, if effected by some form of or evidence of indebtedness, would obviously require prior approval under section 20a. As regards the problem of conflict of liens, it is noted that, as indicated, Great Northern and Northern Pacific each own 830,179 shares, or 48.59 per cent of the issued and outstanding shares of Burlington. Of the shares owned by Great Northern, 829,337 are pledged as security under Great Northern's general gold bond mortgage; and of the shares owned by Northern Pacific, 829,337 are pledged as security under Northern Pacific's refunding and improvement mortgage. Each mortgage permits consolidation or merger with the mortgagor or of a company whose stock is pledged thereunder, but requires that upon such consolidation or merger all of the properties of the company whose stock is pledged shall be subjected to the lien of the mortgage. Such provisions would, of course, require that upon merger of Burlington all of the property of Burlington be subject to the lien of both mortgages. Because the provisions conflict and are obviously inconsistent, they could not both be satisfied. Accordingly, to effect the proposal, it would become necessary to satisfy and discharge one of the mortgages prior to merger of Burlington with the parent companies.

Satisfaction and discharge of the Great Northern general gold bond mortgage is considered to be impractical because certain issues of bonds outstanding thereunder are not redeemable prior to maturity. However, at December 31, 1960, there were outstanding under the Northern Pacific refunding and improvement mortgage

only $17,632,000 principal amount of series A bonds in the hands of the public, callable on any interest payment date at 110 and accrued interest, and $71,500,000 principal amount of series E 4 per cent bonds due in 1984, pledged as collateral security under Northern Pacific's collateral trust indenture dated October 1, 1954, securing $41,262,000 principal amount of 4 per cent bonds due October 1, 1984, outstanding in the hands of the public. That indenture permits the substitution for the pledged series E bonds of other bonds if secured by the same or an equivalent or prior lien upon substantially all the property pledged and mortgaged under the Northern Pacific refunding and improvement mortgage. Applicants, faced with the question of what bonds to pledge under the collateral trust indenture in substitution for the series E bonds, resorted to recommendations by their financial consultants in respect of a satisfactory financial vehicle. However, it was first determined that the Northern Pacific refunding and improvement mortgage be satisfied, and thus upon accomplishment of the Burlington merger transaction, the Burlington properties would then be subject to the lien of the Great Northern general gold bond mortgage.

The issue and sale by bonds of Burlington to New Company is designed to (1) enable the latter to pledge the bonds under its proposed to be created consolidated mortgage, subsequently discussed, and strengthen materially the security for the consolidated mortgage and (2) preserve the bonding power presently available in the Burlington properties. Upon pledge of the bonds by New Company under the consolidated mortgage, that mortgage would become an indirect lien on the Burlington properties, and upon the subsequent accomplishment of the merger transactions, no further bonds would be issuable under existing Northern Pacific, Great Northern and Burlington mortgages, except (1) Burlington bonds for the purpose of pledge under the Great Northern general mortgage, and (2) Great Northern bonds for the purpose of pledge under the consolidated mortgage. However, the Burlington first and refunding mortgage would be closed against any public issue of

additional bonds by the provisions of the Great Northern general gold bond mortgage to which the Burlington properties would be subject.

Since under the proposal, New Company would be successor to Burlington, if both the Northern Lines and Burlington merger transactions are approved, the strengthening of the ability of Burlington's successor to finance its needs, it is asserted, would be a lawful object within Burlington's corporate purpose, and compatible with the public interest, and that object is necessary, appropriate for, and consistent with, the proper performance by the carrier of service to the public because it would greatly improve the ability of the carrier's successor to finance its future requirements for performing the service to the public which Burlington would have previously performed, improve the ability of the carrier's successor to perform its service to the public, and in no way impair that ability.

In order that New Company be provided with a satisfactory financing vehicle, the proposal in the aggregate contemplates, among other things, that a new, modern, flexible, and system-wide consolidated mortgage covering generally the railroad properties of the three principal railroad applicants be created by New Company, which consolidated mortgage would be strengthened by the pledge under it prior to the Burlington merger of $70 million principal amount of Burlington first and refunding mortgage bonds presently issuable under that mortgage. Upon effecting the Burlington merger, that mortgage would be closed against any public issue of additional bonds by the provisions of the Great Northern gold bond mortgage to which the Burlington properties would be subject.

If bonds issued under the consolidated mortgage were to be substituted for the Northern Pacific series E bonds now pledged under the Northern Pacific collateral trust indenture, the consent of the holders of two-thirds of the Northern Pacific collateral trust bonds would be required, because the consolidated mortgage would not have a lien equivalent to that of the Northern Pacific refunding and improvement mortgage on the properties

of Northern Pacific, the Burlington stock would disappear and the Great Northern general gold bond mortgage would be a lien on the Burlington properties prior to the consolidated mortgage.

In summary, the consolidated mortgage, upon completion of the unification program, would be secured by a lien on the properties of New Company generally as follows: (a) after the Northern Lines merger transaction has been accomplished by (1) a lien on the railroad properties of Northern Pacific equivalent to the lien which presently secures the Northern Pacific refunding and improvement mortgage, being a first lien on approximately 1,390 miles (principally branch lines) and a third lien on the balance, and (2) a second lien on the railroad properties of Great Northern (other than the Klamath Falls division) which are subjected to the first lien of the Great Northern general mortgage, and (b) after the Burlington merger transaction has been accomplished by (1) a third lien on the railroad properties of Burlington which are the subject to the first lien of the Burlington first and refunding mortgage and further subject to the lien of the Great Northern general mortgage, to which latter mortgage as of the date of accomplishment of the Burlington merger transaction such Burlington properties would be subjected, and (2) an indirect first lien on such Burlington properties through the pledge of the $70 million principal amount of Burlington first and refunding mortgage bonds. After unification, no further bonds will be issuable under existing Northern Pacific, Great Northern and Burlington mortgages except Burlington bonds for the purpose of pledge under the Great Northern general mortgage and Great Northern bonds for the purpose of pledge under the consolidated mortgage.

The New Company series A consolidated mortgage bonds are proposed to be issued under and secured by the New Company consolidated mortgage creating such series and authorizing such bonds to be authenticated and delivered as per draft of record, under which the trustees would be Morgan Guaranty Trust Company of New York and such individual trustee as may be re-

quired by law. The bonds would be pledged under the Northern Pacific collateral trust indenture, would mature October 1, 1984, would bear interest at the rate of 4 per cent per annum, payable semiannually on April 1 and October 1 of each year, would be issued as coupon bonds in the denomination of $1,000 or as registered bonds without coupons in the denomination of $1,000 or any multiple thereof, interchangeable as to form, would be payable at the office or agency of New Company in New York, N. Y., and would be subject to redemption at any time as a whole at the option of New Company at 102 per cent of their principal amount to and including July 1, 1965, thereafter at 101 per cent of their principal amount to and including July 1, 1970, and at 100 per cent of their principal amount thereafter, in each case with accrued interest to date of redemption.

In addition to providing for issuance of the series A consolidated mortgage bonds for purpose above described, the major provisions for such issuance of bonds would permit issuance as follows: (1) at any time in aggregate principal amount equal to aggregate principal amount of Great Northern general mortgage bonds issuable under Great Northern general mortgage on the latest practicable date prior to Northern Lines merger and of Northern Pacific refunding and improvement bonds which would have been issuable under Northern Pacific refunding and improvement mortgage on such date (considering as to latter restrictions imposed by Northern Pacific collateral trust indenture on further issuance under the Northern Pacific refunding and improvement mortgage), such aggregate principal amount approximating $235,000,000, as of August 31, 1960, (2) $70,000,000 principal amount of bonds at any time after discharge of the Northern Pacific collateral trust indenture and cancellation of the series A consolidated mortgage bonds, (3) for refunding debt having a prior lien on property subject to the consolidated mortgage, as well as for purpose of refunding previously issued series of consolidated mortgage bonds, other than series A bonds, and (4) for purpose of providing for 75 per cent of cost of acquisition (subject to adjustments) of

additions and betterments, additional lines of railroad and other transportation lines, other property, and of common stock of companies owning properties of such character which as of the date of issuance of consolidated mortgage bonds are more than 50 per cent owned subsidiaries whose common stock is subject, or is to be subjected to, the consolidated mortgage, such acquired common stock to be subject to the consolidated mortgage which would be a first lien thereon.

The consolidated mortgage would provide that holders of two-thirds of principle amount of outstanding consolidated mortgage bonds affected may sanction changes in the consolidated mortgage and in the rights of bondholders and way [sic] waive default by New Company other than nonpayment of principal or interest when due. Holders of consolidated mortgage bonds would not be permitted to extend maturity of the consolidated mortgage bonds, reduce the rate of interest thereon, or otherwise modify terms of payment of principal, except modifications dealing with sinking fund provision, or interest without consent of each bondholder affected, or reduce foregoing percentage of bonds without consent of holders of all outstanding consolidated mortgage bonds.

Simultaneously with accomplishment of the Burlington merger transaction, the proposal contemplates satisfaction of the Northern Pacific refunding and improvement mortgage. In order to secure satisfaction of that mortgage, New Company would (1) issue, and with consent first obtained of the holders of two-thirds of the Northern Pacific collateral trust bonds, pledge its consolidated mortgage 4 percent bonds series A due 1984, in aggregate principal amount not to exceed $71,500,000 under the Northern Pacific collateral trust indenture in order to secure release of an equivalent principal amount of Northern Pacific refunding and improvement bonds then pledged under such indenture (aggregating $71,500,000 principal amount as of December 31, 1960); (2) cancel and retire such Northern Pacific refunding and improvement bonds when released from the pledge, and (3) call for redemption of all of the then publicly held Northern Pacific refunding and improvement bonds

(aggregating $17,632,000 amount as of December 31, 1960) and deposit with the trustee of the Northern Pacific refunding and improvement mortgage funds sufficient to effect such redemption at a price of 110 plus accrued interest.

Modification of indenture. The pledge of the series A consolidated mortgage bonds of New Company in substitution for and the release of the Northern Pacific refunding and improvement mortgage bonds as security for the Northern Pacific collateral trust bonds, would be effected under a supplemental indenture to the collateral trust indenture. The bonds, authority for which modification and alteration is sought, are Northern Pacific collateral trust 4-percent bonds, of which not exceeding $52,000 principal amount, due October 1, 1984, were authorized to be issued under and pursuant to, and secured by a collateral trust indenture dated October 1, 1954, between Northern Pacific and The First National Bank of the City of New York, trustee, pursuant to authority granted in Finance Docket No. 18644, *Northern Pacific Railway Company Bonds*, 290 I.C.C. 816, decided October 13, 1954. The bonds mature October 1, 1984, bear interest at 4-percent per annum payable semiannually April 1 and October 1 of each year, are redeemable upon not less than 30 days' nor more than 60 days' notice at option of Northern Pacific, as a whole or in part at any time prior to maturity, and are entitled to the benefit of a sinking fund annually of $1,300,000 for the years 1960-1964, inclusive, and of $1,560,000 for the years 1965-1969, inclusive. As of August 31, 1961, $39,376,000 of those bonds were outstanding, exclusive of $3,699,000 held in treasury or pledged. The proposed supplemental indenture to the collateral trust indenture, in addition to the provisions for assumption by New Company of all of Northern Pacific's obligations under the collateral trust indenture, provides for proposed substitution of collateral, for the elimination of certain provisions of the collateral trust indenture relating to the substitution of collateral, and for the grant of a right to the holders of collateral trust bonds to

direct the manner of voting the pledged series A consolidated mortgage bonds.

The record shows that if bonds issued under the New Company consolidated mortgage were to be substituted for the series E Northern Pacific refunding and improvement bonds now pledged under the Northern Pacific collateral trust indenture, the consent of the holders of two-thirds of the Northern Pacific collateral trust bonds would be required, because the New Company consolidated mortgage would not have a lien equivalent to that of the Northern Pacific mortgage on the properties of Northern Pacific; the Burlington stock would disappear, and the Great Northern mortgage would be a lien on the Burlington properties prior to the consolidated mortgage. The proposed supplemental indenture to permit the substitution of consolidated mortgage bonds for the pledged series E bonds, and amendment of the collateral trust indenture in other respects was approved at a meeting of the collateral trust bondholders held April 20, 1961, by affirmative vote of holders of approximately 88.77 percent in aggregate principal amount of the collateral trust bonds outstanding; no votes were cast against such proposal.

The proposed modification of the Northern Pacific collateral trust indenture, by virtue of execution of the previously described supplemental indenture thereto, would effect a substantial change in the terms of the Northern Pacific's collateral trust bonds issued thereunder and outstanding, and on the basis of, decisions in *United States* v. *New York, N. H. and H. R. Co.*, 276 F. 2nd 525 (2nd Cir. 1959) and *Boston Terminal Company Reorganization*, 312 I.C.C. 373 (1960), the Commission possesses jurisdiction under section 20a of the Act relative to such proposed modification. The authority heretofore granted by the Commission for the issuance of collateral trust bonds under the Northern Pacific collateral trust indenture does not constitute approval under section 20a of the Act of such proposed modification or a waiver of the Commission's duties and responsibilities under section 20a of the Act, and, accordingly, a determination herein of the issues presented thereby is within its jurisdiction, and the recommended findings are predicated on that basis.

Summarizing, the previously described phase of the unification proposal would be accomplished as follows: Upon consummation of the Northern Lines merger transaction, New Company would purchase for cash from Burlington $70,000,000 principal amount of Burlington bonds; New Company would then execute its consolidated mortgage on the railroad properties of Great Northern and Northern Pacific and pledge the new Burlington bonds thereunder; New Company would then issue under the consolidated mortgage and pledge under the Northern Pacific collateral trust indenture, in substitution for the pledged Northern Pacific $71,500,000 principal amount series E bonds, an equal principal amount of its series A consolidated mortgage bonds; and New Company would then cancel the series E bonds and deposit with the trustee of the Northern Pacific mortgage sufficient cash to redeem all of the publicly held Northern Pacific bonds. Thereafter, the Burlington merger transaction would be accomplished, Burlington would be merged into New Company, the Burlington properties would be subjected to the lien of the Great Northern mortgage, and then to the lien of the new consolidated mortgage.

Assumption of obligations.

Concurrently with consummation of the Northern Lines merger agreement, New Company proposes to assume all obligations and liability of Great Northern and Northern Pacific in respect of securities outstanding on the effective date of the merger. The obligations of Great Northern and Northern Pacific as of the latest available date of record consist of bonds secured by encumbrances on their properties, equipment obligations, and guarantees of the obligations of other companies. Pacific Coast has no secured or contingent liabilities. The amount of encumbrances and equipment obligations to be assumed as a result of the Northern Lines merger and the amount of obligations with respect to joint and several guarantees of the same date shown in respect of Great Northern and Northern Pacific, as of August 31, 1961, are set forth in appendices I-5 and I-6. The various bond issues

of Great Northern and Northern Pacific with amounts brought to December 31, 1961, and the encumbrances securing them, are as follows:

(a) Great Northern gold bonds, consisting of six series aggregating $178,662,900 outstanding and publicly held, issued under the Great Northern gold bond mortgage, dated January 1, 1921, under which First National City Bank is successor trustee, and secured by a first lien on approximately 95 percent of the 7,769 miles of railroad owned by Great Northern and on $82, 933,700 par value (829,337 shares) of the capital stock of Burlington, and further secured by a lien on various other railroad properties of Great Northern and interests therein.

(b) Northern Pacific prior lien bonds, in the principal amount of $96,008,300 outstanding and publicly held issued under the Northern Pacific prior lien mortgage, dated November 10, 1896, under which Bankers Trust Company is successor trustee, and secured by a first lien on 4,887 miles of railroad owned by Northern Pacific and on certain pledged securities.

(c) Northern Pacific general lien bonds, in the principal amount of $53,583,900 outstanding and publicly held, issued under the Northern Pacific general lien mortgage, dated November 10, 1896, under which First National Trust Company is successor trustee, and secured by a second lien on the same property and securities as the Northern Pacific prior lien mortgage.

(d) Saint Paul and Duluth Railroad Company first consolidated bonds, in principal amount of $1,000,000 outstanding and publicly held, issued under the Saint Paul and Duluth First consolidated mortgage, dated June 1, 1898, under which Manufacturers Hanover Trust Company is successor trustee, and secured by a first lien on 182 miles of railroad now owned by Northern Pacific and on certain pledged securities. Northern Pacific acquired the properties on June 15, 1900, and assumed those bonds.

(e) Northern Pacific St. Paul-Duluth division bonds, in the principal amount of $253,000 outstanding and publicly held, issued under Northern Pacific's St. Paul-Duluth division mortgage, dated June 15, 1900, under which Morgan Guaranty Trust Company of New York is successor trustee, and secured by a second lien on the same property and securities as the Saint Paul and Duluth first consolidated mortgage.

(f) Northern Pacific refunding and improvement bonds, consisting of $17,569,000 principal amount of series A outstanding and publicly held and $70,250,000 principle amount of series E pledged under the Northern Pacific collateral trust indenture, issued under the Northern Pacific refunding and improvement mortgage, dated July 1, 1914, under which Morgan Guaranty Trust Company of New York is successor trustee and secured by a first lien on 1,390 miles of railroad owned by Northern Pacific and on $82,933,700 par value (829,337 shares) of the capital stock of Burlington, a third lien on 5,069 miles of railroad owned by Northern Pacific, and liens on various other properties of Northern Pacific and interests therein.

(g) Northern Pacific collateral trust bonds, in the principal amount of $40,501,000 outstanding and publicly held, issued under the Northern Pacific collateral trust indenture, dated October 1, 1954, under which First National City Bank is successor trustee, and secured by the pledge of the entire $70,250,000 principal amount of Northern Pacific refunding and improvement bonds of series E outstanding.

Assumption of the indicated bonds and encumbrances by New Company would be evidenced by supplemental indentures to be executed and delivered as soon as the Northern Lines merger is effected, whereby New Company would assume each of the mortgages described and in respect of the collateral trust indenture, assuming the indenture providing for substitution of collateral and

other matters. Drafts of those supplemental indentures, filed of record are as follows:

Supplemental indenture (No. 11) of New Company to the First National City Bank of New York (now First National City Bank), assuming the Great Northern mortgage.

Supplemental indenture of New Company to Boucher Trust Company, assuming Northern Pacific prior lien mortgage.

Supplemental indenture of New Company to Manufacturers Trust Company (now Manufacturers Hanover Trust Company) assuming the St. Paul and Duluth Railroad Company first consolidated mortgage.

Supplemental indenture of New Company to Morgan Guaranty Trust Company of New York assuming Northern Pacific St. Paul-Duluth Division mortgage.
Supplemental indenture of New Company to Morgan Guaranty Trust Company of New York assuming Northern Pacific refunding and improvement mortgage.

Supplemental indenture of New Company to the First Natinal City Bank of New York (now First National City Bank), assuming the collateral trust indenture providing for the substitution of collateral, and dealing with certain other minor matters.

Thereafter, and concurrently with consummation of the Burlington merger agreement, New Company would assume all obligations and liability of Burlington in respect of securities outstanding on the effective date of the Burlington merger. The obligations of Burlington as of the latest available date of record consist of bonds secured by an encumbrance on the Burlington properties, equipment obligation and guarantees of obligations of other companies. The amount of the encumbrances and equipment obligations to be assumed and the amount of obligations with respect to joint and several guarantees shown as of August 31, 1961, are set forth in appendices

I-5 and I-6. The only bond issues of Burlington with amounts brought down to December 31, 1961, and the encumbrance securing them, are:

> Burlington first and refunding bonds, consisting of four series aggregating $127,932,000, in principal amount outstanding and publicly held, issued under Burlington first and refunding mortgage, dated February 1, 1921, under which First National City Bank is successor trustee, and secured by a first lien on substantially all of the 8,047 miles of railroad owned by Burlington and on all shares of capital stock owned by Burlington in the Colorado and Southern Railway Company and in various terminal companies.

Assumption of the indicated bonds and encumbrances by New Company would be evidenced by a supplemental indenture to be executed and delivered as soon as the Burlington merger is effected, whereby New Company would assume the mortgage described. Draft of the supplemental indenture of New Company to the First National City Bank of New York (now First National City Bank) assuming the Burlington mortgage is of record.

Thereafter, and concurrently with consummation of the SP&S lease transaction, New Company, as lessee under terms of lease, would pay as rent the interest on the publicly held SP&S obligations accruing during the 10-year term of the lease, and to pay the principal of the publicly held SP&S obligations maturing during the term of the lease for the account of SP&S, with right of reimbursement. The obligations of SP&S as of the latest available date of record consist of (a) bonds secured by encumbrances of the property, said bonds presently held by Great Northern and Northern Pacific, which would be acquired by New Company following consummation of the Northern Lines merger, and (b) equipment obligations of the same date shown as of August 31, 1961, and are set forth in appendices I-5 and I-6.

An estimate of the expenses to be incurred in connection with the issuance of securities and the preparation, execution and filing of the various indentures on behalf

of applicants was furnished at the hearing in the form of an exhibit, which discloses the following:

Recording fees and taxes	$129,000
Fees and expenses of indenture trustees	76,000
Listing fees on New York Stock Exchange	69,000
Printing and engraving expense	29,000
Other expenses	55,000
	$358,000

Federal stamp taxes applicable to securities to be issued by New Company cannot be estimated, as it will necessarily be determined by the provisions of the Internal Revenue Code in effect at consummation of the transaction. Under present provisions of the Code, the tax on the issuance and transfer of shares of stock is based upon the value of the shares at the time of the transaction, thus the value of the shares to be issued by New Company on consummation is not now ascertainable. No commissions or discounts would be incurred.

Other related assumption of liability.

In connection with the major and related transactions described for which authority is sought and required, New Company would also assume obligations of the merging carriers in respect of pension fund service liability. While such assumption of liability does not require authority from this Commission, it is part and parcel of the transaction, is pertinent and should be discussed. Great Northern has had in effect a pension plan for the past 44 years. Participation in the plan is limited to salaried employees who are employed on a monthly basis and who are not compensated for overtime. The plan may be terminated and discontinued at any time by Great Northern through action of its board of directors with approval of stockholders. Participants in the plan may be eligible at retirement for pension benefits computed by multiplying the participant's years of continuous service by 1½ percent of the average salary received during his last 60 months of compensated employment, less the annuity received under the Railroad Retirement

Act, as amended. Pension benefits are limited to a maximum of 60 percent of the average earnings received during the last 60 months of compensated employment prior to retirement. The plan provides that a widow of a deceased participant will be entitled to benefits equal to one-half of the benefit computed under the plan for her husband, without deduction of the husband's Railroad Retirement annuity, but with deduction of the amount received by the widow as an annuity under the Railroad Retirement Act, as amended.

Actuarial calculations in connection with administration of the pension plan develop an aggregate pension contribution to be remitted by Great Northern to the trustee of the pension trust with respect to officers and employees covered by the plan as a group. Payment to the pension trust for 1960 aggregated $1,397,500, of which $678,100 represented normal cost and $719,400 represented payment toward unfunded past service liability on a 30-year funding basis. Estimated unfunded past service liability as of December 31, 1960, was approximately $14,000,000. As of that date, trust fund assets at cost with respect to all accrued liabilities amounted to $16,957,000. The record reflects tables showing annual benefits payable under the pension plan upon retirement to persons in specified salary classification, which amounts include annuities paid by the Railroad Retirement Board.

Northern Pacific has had a pension system since 1922, limited, with exceptions, to salaried employees paid on a monthly basis and not regularly compensated for overtime, under which pensions were charged to expenses as paid. Effective December 1, 1960, the plan was modified and placed on a funded basis with respect to those previously retired and certain others, including eligible widows of deceased employees and pensioners. Under the funded plan, which may be terminated or modified by Northern Pacific at any time, such salaried employees may be eligible at retirement for pensions computed by multiplying the individual's allowable years of employment by 1⅜ percent of the average of the five highest paid years during the last ten years immediately pre-

ceding retirement but prior to age 70 and deducting therefrom 85 percent of the annuity payable to him under the Railroad Retirement Act, as amended, subject to certain specified limitations. As of December 31, 1960, the estimated unfunded past service liability under the funded pension plan was $10,188,400, and the annual payment to the pension trust was estimated at $1,120,400, of which $518,900 represents estimated normal cost, and $601,500 represents payment towards the unfunded liability on a 25-year funding basis. As of that date, accrued liabilities were funded to the amount of $1,171,000.

Under the unfunded plan, benefits are computed by multiplying the individual's allowable years of employment by 1½ percent of his average monthly earnings received during the five years immediately preceding retirement and deducting therefrom 100 percent of the annuity payable to him under the Railroad Retirement Act, as amended, subject to similar limitations as in the funded plan. The unfunded plan further provides that the widow of a deceased employee or pensioner, meeting the requirements of eligibility, will receive a benefit equal to one-half her husband's pension from Northern Pacific.

Burlington has had a pension system since 1922, under which pensions are charged to expenses as paid. Under the plan as amended by its board of directiors, effective January 1, 1952, which may be terminated or further modified by Burlington at any time, officers and certain employees (but not directors, as such), may be eligible at retirement for pensions computed by multiplying the individual's years of employment, but not in excess of 40 years, by 1½ percent of his average monthly earnings received during the five years immediately preceding retirement but prior to age 70 after deducting therefrom the annuity payable to him under the Railroad Retirement Act, as amended. Pension benefits are limited to a maximum of 60 percent of the average earnings received during the last five years of compensated employment prior to retirement. The plan further provides that the widow of a deceased officer, employee or pensioner, meeting the requirements of eligibility, will re-

ceive a benefit equal to one-half her husband's pension which would have been payable under Burlington's pension system, but for his death.

The retirement system under the Railroad Retirement Act, as amended, under which the present maximum annuity is approximately $2,496 per year, is supported by special taxes levied on both railroads and railroad employees.

The record indicates that it has been agreed that pension benefits payable in accordance with the provisions of the several pension plans of Great Northern, Northern Pacific and Burlington, described in capsule form above, and those of SP&S and Pacific Coast to persons on or entitled to be on their pension rolls when the unification is accomplished and to the widows of such persons shall thereafter be paid by the New Company to the extent that such pension benefits are not paid out of any trust fund theretofore established for the purpose. A new pension plan containing uniform provisions for the payment of benefits upon retirement to all employees of New Company eligible under the terms of existing plans, which would preserve so far as practicable without substantial impairment the provisions made in existing plans for retirement and pension of employees of the applicant companies indicated who are in active service on the date of effectuation of the unification, will be adopted by New Company. It is represented that such new plan will be appropriately integrated with existing funded pension plans for such employees with or without funding of the new plan in whole or in part or continuation of funding under any such existing plan or plans.

Based on preliminary studies for the implementation of the above-described program by applicants' consulting actuaries, it is estimated that in the event such new plan were to be completely funded, the maximum net unfunded past service liability of New Company, on a pro forma basis as of December 1, 1960, would have been approximately $47,500,000, and the maximum annual payments to the pension trust as of the same date would have been approximately $5,000,000, of which $2,530,000 would have represented estimated normal cost and $2,470,000

would have represented payment towards the unfunded liability on a 30-year funding basis. The above estimates do not include the cost of pension benefits to existing pensioners of the companies under existing plans.

Extension of lines of railroad.

As indicated, New Company, and SP&S to the extent of its interest as owner and lessor under proposed lease of portions of extensions described in items (19), (21), and (24), of appendix A hereto, seek authority to construct and operate the extensions of lines of railroad described in items (1) through (24), inclusive, of appendix A. No objections to the extensions are raised. The proposed extensions, ranging in length from 303 feet to 6,568 feet would be constructed by, would connect lines of the unified railroad or, and are intended for use solely as connection between existing lines which would be operated by New Company, following, and contingent upon, approval and consummation of the major transactions here involved, particularly the Northern Lines merger. The projects are located at one point in Wisconsin, seven points in Minnesota, three points in North Dakota, one point in Montana, one point in Idaho, five points in Washington, and one point in Oregon. Construction and operation of the indicated extensions are advanced as necessary to allow trains to pass from one line to another without delay at points, where, under unification, such movements would be essential to economical and efficient operation of the railroad. The new connecting lines would not affect other railroads, nor would they serve any industries or shippers not now being served by applicant railroads.

Passenger, freight, express, and switching service would be performed on all of the proposed extensions except as follows: those described in items (1), (3), (4), (5), (13), (20), (22), and (24) of appendix A would involve freight and switching service only; that described in item (23) of appendix A would involve freight and emergency line detour service. Diesel-electric motive power would be used on each of the proposed extensions.

Construction of the section of 1,460 feet at Superior, Wis., would permit (a) freight trains moving from New Company's yard at Superior to reach present Northern Pacific line to Ashland, Wis., and (b) flexibility in yard switching movements. The section of 2,260 feet at Hinckley, Minn., would permit connection of the Minneapolis-Duluth line of Great Northern with the St. Paul-Duluth line of Northern Pacific as well as flexible operations of the two lines between Hinckley and Twin Cities. The section of 303 feet at Sauk Centre, Minn., would improve flexibility of switching at that point permitting switching between the Little Falls-Morris branch line of Northern Pacific and the St. Cloud-Fargo main line of Great Northern. The section of 835 feet (400 feet constructed and 435 feet relocated) at Wadena, Minn., would improve flexibility of switching at that point to permit more economical arrangement of local freight and make possible future elimination of a railroad crossing at grade. The section of 1,375 feet (500 feet constructed and 875 feet relocated) at Breckenridge, Minn., would permit New Company to consolidate freight terminal operations at that point, improve switching facilities, and make possible elimination of existing railroad crossing at grade, for which authority is concurrently sought elsewhere herein and described in item (1) of appendix B hereto. The section of 2,035 feet at Fargo, N. Dak., would permit rerouting of passenger trains on present Northern Pacific main line through present Great Northern passenger station at that point, which latter station would be used by all passenger trains of New Company serving Fargo. The section of 1,800 feet at Moorhead, Minn., would permit unified operation of the Fargo-Moorhead terminal area. The section of 1,480 feet at Moorhead would connect the two Great Northern Wahpeton-Moorhead and St. Cloud-Moorhead main lines, permitting (a) movement of freight trains from these lines of New Company's principal yard in Fargo area at Dilworth, Minn., on present Northern Pacific trackage, and (b) removal of approximately 2,000 feet of the Wahpeton-Moorhead line for which authority is concur-

rently being sought elsewhere herein and described in item (2) of appendix B. The section of 1,550 feet at Moorhead would permit the movement of freight trains from present Great Northern lines into New Company's freight yard at Dilworth. The section of 1,365 feet at Crookston, Minn., would permit improvement of switching facilities to industries located on present Northern Pacific Crookston-Grand Forks branch line. The section of 1,415 feet at Grand Forks, N. Dak., would permit improvement of switching facilities to industries located on present Northern Pacific line serviced from New Company yard on Great Northern at that point. The section of 700 feet (120 constructed and 580 relocated) at Grand Forks would permit movement of freight and passenger trains from New Company's terminal facilities (now Great Northern) to present Northern Pacific line from Grand Forks toward Grafton. The section of 5,500 feet at East Grand Forks, Minn., would permit improvement of switching services to industries located at Northern Pacific trackage at that point. The section of 2,020 feet at Casselton, Minn., would permit the through transcontinental freight trains of New Company to use present Northern Pacific main line between Twin Cities and Casselton and the Great Northern main line west of Casselton. The section of 4,615 feet at Helena, Mont., would permit rerouting of through freight service between Great Falls and Butte via the more favorable line through Garrison, Mont. The section of 2,600 feet at Helena and the connecting track previously described would permit convenient access to Northern Pacific freight yards and other facilities. Construction of the two previously mentioned sections in Helena would permit removal of approximately 10,404 feet of Great Northern's line for which authority is concurrently sought elsewhere herein and described in item (3) of appendix B. The section of 3,309 feet and the section of 2,338 feet, both at Sandpoint, Idaho, would permit movement of principal transcontinental freight and passenger trains on the Great Northern line east of Sandpoint to the Northern Pacific line between Sandpoint and Spokane. The section of

6,568 feet at Spokane, including construction of bridge over Latah Creek is necessary to unify and would permit through freight and passenger facilities of Northern Pacific at Spokane. The south wye connection would joint the facilities with trackage of SP&S reducing ruling grades on the line toward Pasco and Portland. The north wye connection permits Great Northern to be reached via SP&S and would reduce highway grade crossing problems in Spokane. Construction of the section would make possible removal of approximately 7.7 miles of Northern Pacific line between Spokane and Marshall, authority for which is concurrently sought elsewhere herein, and is described in item (5) of appendix B. Upon completion of the new construction at Spokane and the connecting track at Marshall, the trains now operated over that 7.7 mile segment would be handled over tracks owned by SP&S and leased to New Company. In addition, it would make possible removal of approximately 3.5 miles of Great Northern main line, authority for which is concurrently sought elsewhere herein and is described in item (4) of appendix B. The Spoakne project would permit reduction of highway grade crossing problems in the downtown area of Spokane, to the benefit of both the Spokane public and the railroads. The section of 2,700 feet at Marshall, Wash., would permit trains operated over SP&S trackage between Spokane and Marshall to proceed to or from the Northern Pacific lines at Marshall to Lewiston and Pasco. The section of 2,540 feet near Espanola, Wash., would permit connection where tracks cross at separate grades and permit more favorable route for freight trains between Spokane and the Northern Pacific Washington Central branch line. The section of 880 feet at Rosalia, Wash., would permit improved local freight service to industries in that area. The section of 4,440 feet at Henry's, Wash., would permit a favorable connection for freight movements between points on Northern Pacific main line and the Renton, Wash., area. The section of 2,320 feet at Willbridge, Oreg., would permit trains to proceed directly from the Oregon Electric and Astoria lines over nearby Willamette River bridge

to Vancouver, Wash., and eliminate necessity of reverse movement in order to reach principal freight yards at that point.

At each point of connection, the rails used would conform in weight with rails of existing tracks. The construction would begin within one month after authority is received, and the work would be completed at the various points on different dates ranging from six months to two years after consummation of merger.

The proposed extensions would be financed through available funds in treasury of New Company without issue of securities for that purpose following consummation of the major transactions herein. No aid, gift, grant of right of way, or other donation has been promised in connection with the proposed extensions.

With respect to the extensions described in items (19), (21), and (24) of appendix A, such construction of the portions of the extensions which are on SP&S lines would be for the account of the latter with right of reimbursement in New Company, pursuant to terms of proposed lease of properties of SP&S.

Neither applicant is connected by stock ownership, or otherwise, with any industry to be served by the lines proposed to be constructed and operated. Estimates of the costs of each of the several extensions including appurtenant additions and betterments to existing tracks, signals, communications and structures, based on 1960 levels, are as follows:

Point of construction	Feet of Construction	Estimated cost
1. Superior, Wis.	1,480	$ 142,580
2. Hinckley, Minn.	2,260	81,340
3. Sauke Centre, Minn.	303	5,320
4. Wadena, Minn.	835	27,740
5. Breckenrige, Minn.	1,375	6,910
6. Fargo, N. Dak.	2,035	48,190
7. Moorhead, Minn.	1,800	48,980
8. Moorhead, Minn.	1,480	49,370
9. Moorhead, Minn.	1,550	67,680
10. Crookston, Minn.	1,365	17,060
11. Grand Forks, N. Dak.	1,415	16,480
12. Grand Forks, N. Dak.	700	3,710
13. East Grand Forks, Minn.	5,550	67,030
14. Casselton, N. Dak.	2,020	74,360
15. Helena, Mont.	4,615	64,070
16. Helena, Mont.	2,600	42,290
17. Sand Point, Idaho	3,309	68,000
18. Sand Point, Idaho	2,338	292,060[17]
19. Spokane, Wash.	6,568	5,648,030[17]
20. Espanola, Wash.	2,540	147,600
21. Marshall Jct. Wash.	2,700	28,180
22. Rosalia, Wash.	880	9,670
23. Henry's, Wash.	4,400	163,850
24. Willbridge, Oreg.	2,320	522,880
Total estimated cost		$7,642,380

[17] Includes construction of a bridge.

Abandonment of lines of railroad.

As indicated, subject to consummation of the major transactions here presented, New Company, and SP&S to the extent of its interest as owner and lessor under proposed lease transaction, insofar as it relates to items (5) and (7) of appendix B hereto, seek authority to physically abandon various segments of existing lines of railroad equivalent to approximately 14.86 miles, described in appendix B hereto, contingent upon approval and consummation of the major transactions here involved, particularly the Northern Lines merger, and, as to each abandonment, upon completion of the respective new portion or portions of line proposed to be constructed and operated, as discussed elsewhere herein. The proposed abandonments are unrelated to any decrease of freight or passenger traffic during recent years. The seven segments proposed to be abandoned range from 1,300 feet at Fort Wright, Wash., to seven and seven-tenths miles between Spokane and Marshall, Wash.

No stations are located on the portions of the lines proposed to be abandoned, and no abandonment or reduction of service to any station or territory is involved. None of the segments of line proposed to be abandoned connects with other railroads for interchange of traffic. While the segments of line proposed to be abandoned are located wholly or partly within the limits of cities, towns and villages hereinafter described, their principal use is in connection with the handling of system traffic to and from other territories. The points, areas, population date for 1960 and identity of railroads serving the points are as follows:

Abandonment segment described in item number of appendix B	City, town, village, county and State	Population	Railroads serving city, town or village
(1)	Breckenridge, Wilkin County, Minn.	3,623 10,500	(Great Northern, (Northern Pac.
(2)	Moorhead, Clay County, Minn.	23,000 41,000	do
(3)	Helena, Lewis & Clark County, Mont.	21,000 30,000	do
(4)	Spokane Spokane County, Wash.	190,000 294,000	(Great Northern, Northrn Pac., (Spokane, Int., (SP&S, (Union Pacific.
(5)	Fort Wright (unincorp) Spokane County, Wash.	0 294,000	(Great Northern, (Northern Pac.
(6)	Between Spokane and Marshall, Spokane County, Wash.	100 294,000	(Northern Pac. (SP&S
(7)	Scribner (Unincorp) Spokane County, Wash.	0 294,000	(Northern Pac. (SP&S

Retention of the segments proposed to be abandoned herein, after completion of the proposed extensions connecting existing lines described in appendix A hereto, it is advanced, would constitute an unnecessary duplication of lines within the unified transportation system of New Company. Moreover, in respect of the Spokane-Marshall segment described in item (6) of appendix B, which like the other segments, serves no industries, its removal would not only save maintenance expenses for the railroad, but the state and federal governments would be beneficiaries of savings of approximately $1,000,000 for grade separation structures planned in the same area

in connection with the interstate highway construction program. Inquiry dealing with protection of New Company following abandonment of the 7.7 miles of track between Spokane and Marshall shows that it is present Northern Pacific trackage, that upon completion of this construction at Spokane, the trains now operated over the segment would be handled over tracks owned by SP&S and leased to New Company, that applicants conclude that since New Company would own the stock of SP&S as well as be lessee of SP&S, there should be no apprehension that SP&S might oust New Company from use of the tracks between Marshall and Spokane. While applicants contend that SP&S would continue as leased line of New Company or would be subsequently merged or consolidated, subject to approval, and that in either event New Company would continue to have full use of the tracks of SP&S, and that the Marshall-Spokane segment would not be needed, it is not a matter of immediate concern. The matter of merger or consolidation of SP&S into New Company is clearly a matter for the future, and consideration must be given to the present status of the carriers and their properties and the resulting status if these applications are approved as requested. No objections to the abandonments, however, are raised. The same transportation service now provided over the segments would continue to be provided by New Company, after abandonment of the described segments, through use of and its operations over the proposed extensions described elsewhere herein. Since each of the proposed abandonments is related to and conditioned upon the construction of a new connection, the abandonments would not result in any abandonment of, or reduction in, service to those points or their surrounding areas.

It follows, therefore, that the segments would become superfluous, would no longer be useful or required after the proposed extension to which they relate have been constructed, and abandonment would enable New Company to avoid unnecessary expense of maintaining them after completion of the proposed extensions, thereby increasing the potential railway operating income of the New Company.

No effort has been made to dispose of the segments described, since they would not be appropriate for continued operation either independently or as parts of another railroad.

Physically, each of the segments of line is maintained in condition sufficient to handle the traffic thereon. The tracks are laid on treated ties with gravel, processed gravel, and/or crushed rock ballast, and except that the segments described in items (1) and (3) of appendix B are of 85 pound weight and 90 pound weight, respectively, the rail is of weights ranging from 112 pounds to 131 pounds. The estimated net salvage value of recoverable materials in the segments which would be abandoned, together with estimated costs of removal, based on market values at July 1, 1960, level, are as follows:

Abandonment segment described in item number of appendix B.	Salvage value.	Cost of removal.	Net salvage value.
(1)	$ 3,094	$ 3,884	$ 790 (loss)
(2)	10,250	1,400	8,850
(3)	36,755	8,690	28,065
(4)	174,550	127,517	47,033
(5)	5,025	910	4,115
(6)	378,145	87,139	291,006
(7)	21,000	3,425	17,575
	$628,819	$232,965	$395,854

APPLICANT'S EVIDENCE

Origin of the applications.

The subject applications have important and significant historical origins, and consideration of the proposals would not be complete without some discussion of or reference to those matters which so importantly influenced the corporate lives of the applicant railroads.

As indicated, Great Northern and Northern Pacific jointly acquired control of Burlington in 1901 by pur-

chase of capital stock, thus creating a relationship which has since continued. Likewise, Great Northern and Northern Pacific jointly own SP&S, and its wholly owned subsidiaries Oregon Trunk and Oregon Electric. Great Northern also owns Pacific Coast, and Northern Pacific owns Valley Railway, previously described. Burlington owns a majority of the stock of C&S, which, in turn, owns FW&D. Burlington's lines link those of Great Northern and Northern Pacific with Chicago, St. Louis, Kansas City, Omaha, Denver, Des Moines, and other midwestern points, and, through its subsidiaries, Galveston. The presidents of Great Northern and Northern Pacific traditionally are fellow members of the board of directors of Burlington. In 1903, Great Northern and Northern Pacific formed, and presently own all of the capital stock and jointly manage and control Midland, used by the two applicants in serving Winnipeg and the Province of Manitoba. In 1905, Great Northern and Northern Pacific, again acting jointly, as equal partners formed the Portland and Seattle Railway Company and financed the construction of its line from Spokane to Portland, generally paralleling the Columbia River, a line over which Great Northern also operates by trackage rights. The name of the company was later changed to Spokane, Portland & Seattle Railway Company (SP&S), also an applicant. In 1909, Great Northern acquired trackage rights over Northern Pacific between Seattle and Portland, and in 1910 commenced operating its trains over that segment.

The proposed consolidation is advanced on the basis that with such substantial mutual interests, active without interruption since the turn of the century, unification of the operations of the principal applicant railroads is the normal, natural development and that if, for the purpose of alleviating some of the problems which currently confront the railroad industry, approval is given to mergers and unifications anywhere in the industry, applicant railroads, long allied in extensive joint interests, should be in the forefront of those which are unified.

Several previous efforts were made to unify the operations of Great Northern and Northern Pacific, the first between 1893 and 1896, the second in 1901, and the third in 1927. The first failed because of an adverse decision of the Supreme Court of the United States in *Pearsall* v. *Great Northern Railway*, 161 U.S. 646 (1896) wherein a plan by which Great Northern attempted to obtain control of the Northern Pacific was found to be in violation of a Minnesota statute prohibiting the consolidation of parallel and competing lines. The second failed because of an adverse decision of the same Court in *Northern Securities Co.* v. *United States*, 193 U. S. 197 (1904) wherein a plan under which control of both companies would have been invested in a holding company was found to be an illegal combination in restraint of interstate commerce. The third was approved by the Commission in *Great Northern Pac. Ry. Co. Acquisition*, 162 I.C.C. 37 (1930) herein called the *Acquisition case*, wherein it was found that a plan of control and operation of Great Northern, Northern Pacific and SP&S by a newly formed company, Great Northern Pacific Railway Company would be consistent with the public interest, conditioned, among other things, upon divestiture of Burlington, which condition was unacceptable to the parties and the transaction was not consummated. Other pertinent conditions included: Unification of the new company's terminals so that every industry would have access to all lines and every line carrier would have access to all terminal tracks of the new company, and trackage rights for Milwaukee over the tracks of SP&S between Spokane and Portland. The instant proceedings involve the fourth effort.

During the pendency of the *Acquisition case, supra*, the Commission was engaged in promulgating a master plan for the voluntary establishment of a limited number of railroad systems in the continental United States in conformity with the mandate of the Congress of the United States in the Transportation Act of 1920. In *Consolidation of Railroads*, 159 I.C.C. 522, (1929), after several years of study, a plan was promulgated for a limited number of systems, wherein Great Northern,

Northern Pacific and SP&S, together with a number of other railroads were designated as "System No. 12-Great Northern-Northern Pacific," and Burlington, together with a number of other railroads, was designated as "System No. 14-Burlington." The master plan as promulgated obviously was the basis for exclusion by the Commission of Burlington when it approved in 1930 unification of Great Northern, Northern Pacific and SP&S. However, as stated above, plans for unification of those railroads as applied for were dropped. Because no program of unification in conformity with the Commission's complete plan of 1929, or in conformity with the modified plan of 1932 (185 I.C.C. 403) was accomplished, subsequent economic conditions in the railroad industry produced a renewed demand for railroad consolidation.

Accordingly, in 1940, Congress amended the Act by repealing the provisions of the Transportation Act of 1920 which had required the Commission to promulgate a master plan, and in lieu thereof amended section 5(2)(a) of the Act to provide a scheme of voluntary consolidation to be proposed by the carriers and such proposals were to be approved by the Commission if it found them to be consistent with the public interest.

It is significant to note that both the 1920 and 1940 Acts of Congress viewed railroad consolidation as desirable and in the public interest in helping to provide for an adequate and efficient transportation system. See *United States* v. *Lowden*, 308 U.S. 225 (1939), and *County of Marin* v. *United States*, 356 U.S. 412 (1954). These applications were filed seeking authority under the 1940 amendment which enacted section 5(2)(a) of the Act in its present form. Applicants consider the circumstances upon which the Commission predicated its findings in the *Acquisition case*, *supra*, that unification of Great Northern, Northern Pacific and SP&S would be in the public interest, as present today, though emphasized by the vast changes in transportation conditions in the areas served by the applicant railroads during the intervening years.

Concerned with the wide changes which have occurred in transportation conditions in the area served by the

four principal applicant railroads in the intervening years since the decision in the *Acquisition case, supra*, the fact that the competitive picture, from a transportation standpoint, has been subjected to broad changes to the railroads' disadvantage, due to extensive development of highway and waterway traffic permitting a gradual erosion of railroad traffic to such other forms of transportation, the failure of railroad freight traffic to grow, the decline in railroad passenger traffic, the increased costs of doing business and the resulting strain upon the earning power of the railroads, in 1955 the presidents of the two Northern Lines initiated informal discussions with a view to recanvassing a program for suitable consolidation and unification of the properties of the applicant railroads, as a means of eliminating separately owned duplicating facilities and services, and the unifying of operations and services to the extent not possible under separate ownership, and providing other efficiencies.

The discussions were predicated on the conviction that the future of the railroad industry in the United States and the furnishing of adequate and efficient railroad service to the nation depended importantly upon consolidation of the railroads into a few large systems in major regions and that the time had arrived to look into the effects upon the public interest and the interests of stockholders of a consolidation of the properties and franchises of the principal applicant railroads.

Subsequent exploratory discussions revealed a recognition that as railroad officials they had a mutual and considered responsibility to enable their respective companies to provide adequate, attractive and efficient service to the public; to obtain a fair return on the investment in the properties; and to provide employment to the extent that circumstances permit to the men and women who depend on the railroad applicants for their livelihood. Their concern in the aforementioned areas impelled the exploration of the possibility of unification of the properties so as to provide better service at charges low enough to move the traffic and to strengthen the companies against the competition of other modes of transportation. Moreover,

concern was evidenced that the time had arrived to reappraise the effects upon the public interest and the interests of stockholders of a consolidation of the properties and franchises of the four principal applicant railroads.

Economics reports and appraisals.

Subsequently, in early 1956, and as a result of the initial informal discussions, the boards of directors of Great Northern and Northern Pacific authorized the appointment of separate consolidation committees of five directors each. Those committees were authorized to act as a joint consolidation committee to make a study for the purpose of determining whether or not it would be in the interest of the companies and their stockholders, and in the public interest to effect a consolidation of the properties of Great Northern, Northern Pacific, Burlington, and SP&S, and their subsidiaries and report to their respective boards of directors with recommendations. The president of Burlington was invited to be an ex-officio member of the joint committee.

Shortly after it was concluded by the presidents of the Northern Lines that there was a necessity of conducting a study to determine whether or not it would be in the interests of the railroads and their stockholders and in the public interest, to merge, announcements that a study would be undertaken were made to the public and the employees in January and February 1956. Subsequent announcements were made from time to time to keep the public and employees informed of significant developments. The first act of the joint consolidation committee was employment in July, 1956, of a leading and independent transportation engineering consulting firm, William Wyer & Company (now Wyer, Dick & Co.) to supervise and direct studies and investigation into the operating advantages and savings which might accrue through unification of the four principal named companies, together with Pacific Coast, a short line only 32 miles in length, so as to utilize all lines most effectively and, by combining the best in each of the properties, develop a better railroad than anyone of the individual

applicant railroads to produce a transportation service more attractive to the public and more economical for the railroads, and report as to the estimated changes in net income which might be reasonably expected to result. The studies embraced consideration toward unification of all the lines mentioned, except C & S and its wholly-owned subsidiary FW&D, subsidiaries of Burlington. Oregon Trunk and Oregon Electric, subsidiaries of SP&S, and Valley Railroad, a subsidiary of Northern Pacific, were included in the studies and their operations and traffic analyzed, but it is proposed to maintain their separate identities. Insofar as it pertains to the last three mentioned, separate maintenance is predicated on basis that substantial annual revenue ($372,655 for 1955) arising in part from favorable divisions as short lines would be jeopardized if they were consolidated, although its estimated annual cost of operating the three companies separately would approximate only $25,000, and available economies would not be sufficient to affect those carriers. To outline and direct the various subjects of study a steering committee was formed consisting of the principal members of the consulting firm and representatives of Great Northern, Northern Pacific, Burlington, and SP&S, and the studies were accomplished through use of and in concert with the staffs of the respective railroads.

The subjects which were determined to warrant investigation and study were discussed with and agreed upon by a steering committee, composed of representatives of the consultants and the four principal railroads, which outlined, directed and coordinated the work of the appropriate departments and personnel of the applicants in the assembling and tabulation of data required in the many studies involved. A number of basic analytical principles and methods, including changes in costs, improvement in technology, and labor protection, utilized in estimating savings, were adopted to govern the development of all studies, and numerous other factors, including cash requirements and realization, and allowance for contingencies, were also considered. An assumption of major importance was the decision to use the carload freight

traffic for 1955 as the basis for the studies, which was the latest year available and, it was concluded that it was a typical year, upon which to estimate effect upon income from consolidation for the next few years. Each of the many studies to be investigated was reviewed and discussed with the department heads who would be responsible for furnishing the information requested, and, after consolidation of all suggestions, procedure sheets prepared by the consulting firm were issued for the assembly of the data. During the progress of the studies many meetings of the steering committee were held, and every report finally presented was unanimously approved by the full-time members of the steering committee.

Pending completion of the studies, discussions were largely exploratory as it was recognized that a major difficulty in arriving at fair and equitable terms including exchange of securities, would also include problems dealing with Northern Pacific's natural resources properties.

On March 25, 1957, the Great Northern committee sought outside assistance by retaining First Boston Corporation, of New York City, as its financial advisor, particularly to express an independent judgment concerning the fairness to security holders of Great Northern of any proposed plan of merger agreed upon, and by employing on May 16, 1957, the firm of Pishny and Atkinson, of Fort Worth, Tex., to evaluate Northern Pacific's oil and gas resources, and C. D. Schultz & Company, Incorporated, of Seattle, Wash., to evaluate Northern Pacific's timber lands and timber resources. Some months later (February, 1958) the Northern Pacific committee retained Morgan Stanley & Co., of New York City, to act as its financial advisor, particularly, to advise as to whether the proposed consolidation of Great Northern, Northern Pacific, Burlington and SP&S, would be in the best interests of Northern Pacific stockholders, and, if so, on what basis of exchange with Great Northern stock, and employed De Golyer and MacNaughton, of Dallas, Tex., to evaluate Northern Pacific's oil and gas properties, and Mason, Bruce and Girard, of Portland, Oreg., to evaluate Northern Pacific's timber lands and timber

resources. Those reports, recommendations contained therein, and judgments determined, will be discussed subsequently dealing with exchange ratio and arms-length bargaining.

Consolidation study report. On December 1, 1957, the original report of Wyer, Dick & Co., titled "Report on Economics of Proposed Consolidation", in detail, was completed and delivered. It indicated that annual increased net income at then current revenue and expense levels realized from consolidation may approximate as high as $46,479,246, which should be reduced by 12½ percent as allowance for contingencies more fully explained in the report, with a final estimate of ultimate annual increase in net income of $40,669,340, which savings as well as other estimated savings throughout the report would be before recurring federal income taxes, reduced by five percent on the net cash required to effect consolidation, computed after allowing for salvage and non-recurring income savings. After considering that report, the consolidation committee authorized continued negotiations between Great Northern and Northern Pacific.

The magnitude of the savings and efficiencies which only unification could afford, and which would be lost without unification, persuaded the managements of the two Northern Lines to persist in efforts and negotiations to reach agreement on merger terms in the lengthy period of hard bargaining which ensued. A number of important principles motivated the merger negotiations. It was recognized, however, that in arriving at terms if complete agreement was to be reached, that any merger terms recommended for submission to stockholders would have to be fair and equitable to the stockholders of Great Northern, Northern Pacific and the minority stockholders of Burlington, and would have to adequately reflect the present and potential values of the properties.

The managements of the two northern lines were convinced that through merger better service to their patrons and to the territory involved would result, and that they could not ignore the impact of the report and permit the substantial potential savings and improved service

therein recommended to be dissipated and wasted through inability to reach a solution to the question of what is an equitable exchange. While intent on finding a solution, they were also intent on fully protecting the investment of their respective stockholders and bondholders. They also recognized their duty as corporate officers and as stewards of the stockholders to arrive at terms that would adequately reflect the present and potential values of each of the properties. Negotiations as to exchange ratios for Great Northern and Northern Pacific stock continued during 1958, 1959, and first half of 1960. The determination of a fair and equitable exchange ratio was considered a matter of judgment based on a combination of all factors, including a realistic appraisal of what terms would be necessary to bring about acceptance by both sets of stockholders, and that subject is dealt with in detail elsewhere herein.

In 1960, following agreement of the two Northern Lines that unification should be accomplished, but before final action was taken by the respective boards of directors, changes had occurred in cost levels, operating conditions and physical facilities which had existed during the 1955-1956 period on which the original operating study was made by Wyer, Dick & Co., and in July, 1960, the latter was requested to review its studies and update its report to reflect not only changes in cost levels since the original report, but also changes in operating conditions and physical facilities which occurred in the interim. The original studies were reviewed and revised to reflect current conditions to the extent necessary and rates and costs were adjusted to the levels of July 1, 1960, and additional studies were made into the potential savings from consolidation of certain passenger trains between Chicago and St. Paul, and potential savings in federal income taxes on the Burlington dividends.

The supplemental report of the consultants was submitted to the presidents of the two Northern Lines on November 8, 1960. The combined original and supplemental reports of the consultants, including numerous maps, embraced some twenty definitive studies subsequently described, and related appendices, which purport

to support the estimates, conclusions, and recommendations developed, and is herein referred to as the Wyer Report.

The consolidation study also included review and analysis of refrigerator car companies and protective service, waybill analysis, normalized maintenance, out-of-pocket cost of handling freight traffic.

Preliminarily, analysis shows that as of the end of 1956, Burlington and its rail subsidiaries owned about 2,000 refrigerator cars, all operated by its wholly-owned subsidiary, Burlington Refrigerator Express (BRE); that Western Fruit Express (WFE), a wholly-owned subsidiary of Great Northern owned and operated about 6,100 refrigerator cars; that the BRE & WFE operations are conducted as a part of a pooled operation with Fruit Growers Express (FGE), owned by many eastern and southeastern railroads; that FGE owned approximately 13,600 cars, or a total of 22,000 cars in the pool, and those companies have car supply and service contracts with numerous railroads. In addition, Northern Pacific owned approximately 1,450 refrigerator cars furnishing its own protective services, and has car service contracts with Merchants Dispatch Transportation Corp. (MDT) and Northern Refrigerator Lines (NRL), both owned by New York Central Railroad.

A number of questions were preliminarily posed dealing with refrigerator car companies protective services, and refrigerator car supply and the Wyer Report left that matter to be resolved by the board of directors and officers of New Company. The questions dealt with numerous problems facing the carriers in the particular field, such as number of cars to be owned, directly or indirectly, car supply, loading season and cooperative efforts, long haul on Great Northern-Northern Pacific perishable loadings, on-line protective services, car cleaning and repair, and general supervision. Also were included questions dealing with alternatives facing consolidated companies as to possible organization and services such as owning and operating its own refrigerator cars, and, if so, what methods of alliance should be utilized in connection with the car owners, car pools and the desira-

bility of a private line car company as a wholly-owned subsidiary.

The waybill analysis which was preliminarily conducted involved an effort to provide a basis for studies II, VI, VII, and XVII, and was achieved through a ten percent sample of the total traffic handled during 1955 reported by each of the carrier applicants to this Commission on its Schedule 541 of Form A, annual report, showing by commodity the cars, tons, origin and destinations, routing and revenues, with some exceptions, later discussed.

The study of normalized maintenance dealt with the development of maintenance costs for way and structures and diesel locomotives which would be normal and not affected by economic factors of a given period and area.

In certain studies, estimated effect of consolidation was measured by increase or decrease in gross ton miles handled by consolidated company, and resultant increase or decrease in operating expenses estimated by applying out-of-pocket unit costs of handling.

Moreover, the Wyer Report analysis indicates that while some of the coordination of facilities and operations might be possible without unification, they are impractical in the present situation for the reason that successful large scale coordinations depend upon a basic concept of cooperation between carriers made possible by lack of direct competition or by some substantial degree of stock control; that here the parent-companies (the two Northern Lines) are directly competitive, and there is no question of stock control by either one of the other; that the two Northern Lines jointly control Burlington, and substantial savings are included as a result of including Burlington in the consolidation; that while some of the savings could be realized through coordination, in that they are physically possible, they would be largely for the benefit of one of the parent companies to the detriment of the other, and thus would never be agreed to jointly; and that consolidation of those principal three carriers is the only practical method of realizing such savings.

Thus, no economies have been included in the studies realizable apart from consolidation. Improvement of ex-

isting conditions which could be done presently without consolidation has been excluded. Complete dieselization has been assumed to exist before estimating additional economies realizable from consolidation. While impractical to analyze all carload freight traffic handled in 1955, estimates of effect of consolidation upon freight revenues were based, as indicated, primarily on 10 percent sample of all freight previously described.

In addition to the economies estimated would accrue to the unified lines, certain benefits would accrue to other lines. Those benefits would be manifested in more economical interchange as well as from consolidated accounting, particularly dealing with interline settlements. No efforts were made to estimate the savings which applicants anticipate would accrue to other lines.

Suffice it to say, the Wyer Report contains numerous recommendations and advocates methods by which economies and service improvements could be achieved on a unified basis, together with advisories looking toward a strengthening of the resulting railroad system to enable performance of more efficient and effective operations, which in the aggregate, was sufficient to influence the committee to conclude that unification would be a desirable and necessary objective. Applicants thus concluded that results of merger would permit better transportation at substantially lower expense; that improved service which would be of direct benefit to shippers and consignees who use and rely on these railroads would be their first consideration; that substantial economies which would generate new capital necessary for increasingly expensive items, such as electronic classification yards, centralized traffic control and specialized equipment, are a necessary concomitant to providing such service; and that economies are also necessary to enable applicants to maintain rates on the products of the Northwest at the reduced levels which make possible the sale of those products in distant markets.

The efforts subsequent to the submission of the original Wyer Report, and the other appraisals mentioned, resulted in actions by the principals in the execution of the agreements previously described, which would bind

their courses of action toward effecting a unification of the properties and operations, and their efforts toward the processing of appropriate application for authority to consummate the transactions, which agreements have been discussed. Applicants rely on the Wyer Report as updated, as its principal supporting document, of which all underlying data, voluminous in nature, were made available for inspection at and during the hearings, and considerable evidence was adduced in proof of the substance thereof.

Estimated Savings. The aggregate effect of the consolidation, as proposed, to New Company, adjusted to July 1, 1960, would result, with the approval of this Commission, in the creation of the most extensive railroad network in the United States, which would serve 17 states and 2 Canadian provinces, with a total of 24,728 miles of track exclusive of, and 26,802 miles of track inclusive of, trackage of subsidiaries, with annual railway operating revenues of over $706 million, and an estimated maximum annual savings, before income taxes, of $49,339,474, less allowance of 12½ percent for contingencies of $6,174,934, or net estimated savings of $43,224,540. In addition to the foregoing, estimated cash realizable from consolidation would aggregate $58,806,-253, and estimated gross cash required to effectuate consolidation aggregate $54,623,364, resulting in net cash realizable from the consolidation of $4,182,889.

The following summarizes applicants' estimate of ultimate annual savings at revenue and expense levels of July 1, 1960, showing the net results of each of the twenty component subject studies and the related estimated net cash realized, if any, from consolidation of the properties, as proposed:

Study		Estimated Savings	Net Cash Realized
I	Common Points	$15,846,802	$(26,206,751)[18]
II	Duplicate Lines	3,059,838	11,078,547
III	Lines Retained—Effect of Consolidation on Expenses	2,486,579	8,242,234
IV	Duplicate Freight Train Service	1,697,725	
V	Duplicate Passenger Train Service St. Paul-Chicago	490,856	
VI	Car Load Freight—Shortest or Most Economical Joint Routes	3,630,910	
VII	Car Load Freight-Longer Hauls	10,561,178	
VIII	Less Car Load Freight—Loading Patterns	455,888	
IX	Equipment Pools	3,343,697	8,069,356
X	General Repair Facilities	2,194,535	1,043,187
XI	Material & Supplies Stocks and Purchases & Stores Organization	1,366,319	4,667,173
XII	Foreign Line Freight Charges on Company Material	167,321	
XIII	Communications Facilities	460,114	(423,720)
XIV	Train Despatchers	330,809	
XV	Special Agents	124,463	
XVI	Dining Car Departments	80,136	94,492
XVII	System Revenues	(1,958,705)	
XVIII	System Expenses	10,586,135	

[18] ( ) Denoted net cash required.

Study		Estimated Savings	Net Cash Realized
XIX	Labor Contracts	$ (885,360)	$(2,768,808)
XX	Taxes	(4,639,766)	
	Total Savings	$49,399,474	
Less:	12½ Allowance for Contingencies	(6,174,934)	
	Estimated Savings Before Income Taxes	$43,224,540	
	Total before Corrections in Exhibit No. 5		$3,795,710
	Amount not reconciled represented as net increase, as corrected, in net cash realized (From Exhibit 5)		387,179
	Total Net Cash Represented as Realized from Consolidation		$4,182,889

Certain of the estimated savings would not be fully realized immediately. Applicants estimate that approximately 98 percent of such savings aggregating $42,603,362 should be realized during the first five years after consolidation, with the remaining two percent realized between the fifth and tenth years. The total estimated net cash of $4,182,889 is expected to be realized during the first five years after consolidation. The time factor is important because of the required steps to be taken at the various common points. Not only must savings at some points be deferred until yards and bridges can be constructed, but savings from re-routing of trains to the shortest or most economical routes shown in study VI are also dependent upon much construction. The operations and other changes to effectuate the unification proposals and achieve the estimated economies and increased level of efficiency would be made as soon as possible after the mergers and lease authorities are permitted to become effective, if authorized. The planned order of various changes which involve construction and the esti-

mated amount of time required for accomplishment are described in the several studies subsequently discussed.

All such estimated changes in connection with retirements, new construction, and payments under the Washington Agreement or the Act, included in study XIX have been included in the net cash requirements, and 5 percent on those amounts has been deducted in arriving at annual estimated savings. The following tabulation summarizes estimated savings and net cash applicants expect would be realized by years:

Year	Estimated savings.	Percent Realized	Established net cash to be realized.
First	$10,113,863	23	$1,181,052
Second	25,894,798	60	(9,526,428)
Third	35,610,536	82	7,907,605
Fourth	40,691,217	94	4,263,938
Fifth	42,603,362	98	356,722
Tenth	43,224,540	100	

Applicants estimate that the cash required for construction, employee protection, etc., would approximate $54,623,364. The cash estimated to be realized from salvage, elimination of extraordinary expenditures which, as a result of consolidation, would not be required, nonrecurring income tax and other items total $58,419,074, which exceeds by $3,795,710 the amount of estimated cash required for construction, employee protection expenses, etc. Because of the necessity to make capital expenditures faster than savings from salvage and income taxes are realized, applicants anticipate periods, especially in the second and third years, when the required cash would exceed the cash realized.

Under the proposals in the aggregate three principal areas of fund requirements warrant limited discussion at this point. To accomplish consolidation as proposed, there would be the requirement for funds ($70 million) needed by the first merged company to buy the Burlington bonds; second, requirement for funds (approximately $19 million) needed to buy the Northern Pacific refunding and improvement bonds outstanding in the hands of the public; and third, requirement for funds (approxi-

mately $54 million) for the five years following unification as outlay for various projects described in the studies in the Wyer Report. Applicants anticipate no difficulty in acquiring cash needed for the purposes, consideration herein given, among other things, to the present cash position of the three principal railroad applicants. Applicants estimate the net cash requirements by years following consummation as follows:

By end of:		
First Year	—	$1,181,052 (gain)
Second Year	—	8,345,376 (loss)
Third Year	—	437,771 (loss)
Fourth Year	—	3,826,167 (gain)
Fifth Year	—	3,795,710 (gain)

The four basic studies of the effect of consolidation upon physical facilities and their maintenance and operation are studies I, II, III and X. For purposes of clarity and understanding it is desirable that a resume of each of the twenty studies be discussed. Each has been analyzed in the light of the record and certain representative figures relied on by applicants have been discarded for reasons stated. Following discussion of the studies there appears a summary of the estimated savings as modified by the facts of record recognized as realizable on a conservative basis.

1. *Study I* comprised a review of operations at all common points to determine and estimate potential savings from consolidation as a result of serving each point with the single unified operation. The basic assumption involved in consolidating terminals was utilization of facilities and forces most efficiently, and where one road was not used to capacity and its businesses could be absorbed by the other with little or no expansion, release or reduction of land, buildings and other cost items would be possible, and that where neither of two roads has facilities suitable for the combined business of three, the most suitable facility was chosen for use by the consolidated company, and an estimate made of cost of construction, maintenance and operation of the facility.

As a result, it is anticipated numerous public benefits would accrue, including elimination of delay of shipments at terminals, elimination of some switching changes, convenience of shippers dealing with a single organization rather than two or more, ability of consolidated company to service and hold proper type of cars for local service, release of land and buildings for industrial or urban development, elimination of tracks and grade crossings from city streets, and improved car supply because of reduced delay to freight cars in terminals at common points. There are approximately 100 common points served by two or more of the four principal railroads involved. Great Northern and Northern Pacific, in general, parallel each other from Duluth-Superior and St. Paul-Minneapolis on the east, to Spokane and Seattle on the west. At many points they serve the same large stations and in other situations their lines cross or meet at smaller outlying stations. For example, at present services are usually performed at these so-called "common points" by two separate organizations. Burlington serves only two common points with the Northern Lines, namely, St. Paul-Minneapolis and Billings-Laurel and both Great Northern and Burlington serve Sioux City. The Northern Lines serve several common points west of Spokane jointly with SP&S. Some are small non-agency stations where there are no potential savings and a few relatively small stations which are now performing services for two or more applicant railroads. At 39 [19] of 100 common points consolidation would result in greater efficiency of operation and produce net ultimate annual savings approximating $15.8 million, and 85 percent of the estimated savings determined in the study is concentrated in savings from consolidation at five principal common points:

[19] Head-of-the-Lakes, Hinckley, St. Paul-Minneapolis, St. Cloud, Sauk Centre, Wadena, Walker, Bemidji, Morris, Breckenrige-Wahpeton, Fergus Falls, Fargo, Red Lake Falls, Crookston, Grand Forks, Grafton, Leeds, Hannaford, New Rockford, Casselton, Billings, Helena, Butte, Sandpoint, Couer d'Alene, Moscow, Spokane, Rosalia, Oakesdale, Garfield, Palouse, Bellingham, Sedro-Wooley, Everett, Snohomish, Seattle, Tacoma, Portland-Vancouver, and Sydney.

St. Paul-Minneapolis $5,613,077; Seattle $2,891,638; Head-of-the-Lakes $2,693,907; Spokane, $1,646,419; and Portland-Vancouver $668,476. Consolidation at the 34 other common points would produce savings varying from $317 for Sandpoint to $620,724 for Fargo, averaging $68,635 per point. On the other hand, extensive construction work at all 39 points requiring expenditures approximating $45.0 million would be necessary to secure the estimated savings realizable from consolidated operation. New construction costs, it is estimated, would be offset in part by (1) savings from salvage; (2) saving costs of extraordinary expenditures during the first four years after consolidation which would have been made under separate operation, but which would be avoided by consolidation; and (3) non-recurring income tax savings related to property changes recommended. Net cash required for consolidation principally for new construction, updated to July 1, 1960, is estimated at $26,206,751. Those projects of new construction include: construction of a new electronic freight classification yard [20] (Northtown) at a gross cost of $14,550,000, and a new joint Twin Cities freight house (Midway) at Minneapolis, large new terminal facilities and improvements including a new electronic freight classification yard [20] at Spokane at a gross cost of approximately $11,342,000, and a new freight classification yard [21] at South Seattle at an estimated gross cost of approximately $6,000,000. In order to make definite terminal plans for the Seattle area, it was necessary to first determine the main line which would be used for handling through freight to and from Spokane and the east. That is shown in study VI where it was determined that west coast business originating or terminating Tacoma and north, including Seattle, would be routed over Great Northern trackage via Everett. Important terminal improvements are contemplated at many other common points, include construction of a viaduct at Spokane at an estimated gross cost of approxi-

[20] Also embraces grain inspection facilities and diesel and car repair facilities.

[21] Also embraces diesel and car repair facilities.

mately $6,209,000, to integrate Northern Pacific, Great Northern and SP&S operation and make possible routing of all trains throught the city on elevated trackage; additional trackage and facilities at Superior for a classification yard. Total estimated savings at 1960 conditions and costs approximated $17,157,138. Interest at five percent per annum on $26,206,751 (or $1,310,336) would be deducted as part of necessary expense required in consolidating the properties, and the total estimated savings after such deduction would be $15,846,802 on the largest single item of savings in the studies herein discussed.

The total net cash requirements of $26,206,751 and estimated savings of $15,846,802 is summarized as follows for five of the larger and principal common points:

	Estimated Net cash required for consolidation	Estimated annual net-savings from consolidation (maintenance, operation, etc.)	Less 5% annual interest on net cash required for consolidation	Estimated annual net savings from consolidation
ul-neapolis	$ 9,867,607	$ 6,106,457	$ 493,380	$ 5,613,077
e	5,289,962	3,156,136	264,498	2,891,638
h-perior	1,290,926 (G)	2,629,060	64,547 (G)	2,693,607
ne	9,955,920	2,144,215	497,796	1,646,419
nd-couver	854,801	711,216	42,740	664,476
	$24,677,354	$14,747,084	$1,233,867	$13,513,217
34 mon points	1,529,397	2,410,054	76,469	2,333,585
ain	$26,206,751	$17,157,138	$1,310,336	$15,846,802

Gross cash expenditures by years for common points is not ascertainable. However, construction of yard facilities would begin one month after consolidation with anticipated completion dates at Head-of-the-Lakes (Duluth-Superior) 2 years; Twin Cities (Minneapolis-St. Paul) 3 years; Fargo 1 years; Spokane 3 years; Seattle 2 years; and Portland-Vancouver 1 year.

Likewise consolidation of freight and passenger stations and forces at all common points would begin one month after consolidation except at Duluth, Superior, St. Paul, Minneapolis, and Seattle at which point passenger stations and forces are already joint; Tacoma, at which passenger stations and forces are already coordinated; Portland-Vancouver and Sidney, Mont., at which both passenger and freight stations and forces are already coordinated; and at Minneapolis, at which new freight house at Midway would require two years for completion. Passenger facilities would have to remain separate until connections would be completed requiring one year at Fargo-Moorhead, and 2 years at Spokane. Consolidation of car repair and engine house forces would begin one month after consolidation and have anticipated completion times at Butte, Bellingham, Everett, and Tacoma, 1 month; Head-of-the-Lakes and Grand Forks 6 months, Fargo 1 year, Seattle 2 years, and Spokane and Twin Cities 3 years. Construction of line of connecting tracks to begin one month after consolidation and have anticipated completion times at Superior, Sauk Centre, Crookston, Grand Forks, and E. Grand Forks of 6 months, at Hinckley, Wadena, Breckenrige, Casselton, and Rosalia of 9 months, at Fargo, Moorhead, Helena, Sandpoint, Espanola, Henry's and Portland of 1 year, and of Spokane-Latah Creek bridge and Marshall of 2 years.

The total annual savings at the 39 common points are predicated in part upon estimated abolition of 1,319 jobs and elimination of 707 switch engine "tricks" per week as of July 1, 1960.

2. *Study II* had for its purpose a determination of how many duplicate or parallel lines exist among the companies and what the estimated savings would aggregate if such duplicate lines were abandoned as a result of consolidation. Upon analysis of the lines of each of the component railroads, it was determined that no duplicate lines exist on Burlington or SP&S, but that thirteen such lines of Great Northern and Northern Pacific systems were considered suitable subjects for abandonment in event of consolidation, subject, however, to prior approval by the Commission. Originally 480.3 miles of railroad

were recommended for abandonment as not required in event of consolidation. Those segments represent in part duplicate facilities presently required because of the competitive situation existing between the two Northern Lines but would not be required after consolidation, and in part, branch lines maintained by one applicant to reach a station located on the main line of another applicant. The station, after consolidation, would be better served by the main line service of the consolidated company, it is advanced, and the branch line could be abandoned. The local stations to which service would be abandoned handle little or no traffic. Those segments comprising the 480.3 miles of road are as follows:

	Segment	Road	Miles
(1)	Carleton-Hinckley	Northern Pacific	54.6
(2)	Monticello-St. Cloud	Great Northern	24.0
(3)	Little Falls-Starbuck	Northern Pacific	67.8
(4)	Sauk Centre-Long Prairie	Great Northern	18.6
(5)	Park Rapids-Cass Lake	Great Northern	49.2
(6)	Fertile-Tilden Junction, Red Lake Falls-Buffington, Carthage Junction-Crookston	Northern Pacific	51.0
(7)	Minnewaukan-Leeds	Northern Pacific	18.2
(8)	Butte-Helena	Great Northern	71.3
(9)	Hauser-Blackwell	Northern Pacific	10.6
(10)	Spokane-Moscow	Great Northern	33.0
(11)	Snohomish-Sedro-Woolley	Northern Pacific	45.4
(12)	Wickersham-Larson	Northern Pacific	16.3
(13)	Odair-Adrian	Northern Pacific	20.3

It was estimated that said abandonments as originally contemplated would generate $11,046,970 in cash, and produce estimated annual savings of $2,950,640. However, the Wyer Report, updated to July 1, 1960, indicates that 11.6 miles of line had already been abandoned be-

tween Fertile and Tilden Junction, and certain other economies had been effected. The revised study estimates approximately 468.7 miles of road as previously described, exclusive of the mileage between Fertile and Tilden Junction generating net cash of $11,078,547 and producing an estimated annual savings of $3,060,168, should be abandoned, subject, however, to prior approval by this Commission. Significantly, the 12½ percent allowance for contingencies to which reference has been made is advanced for several reasons, one of which is important to this study II and that is that authority may not be received from this Commission to abandon all of the lines recommended for future abandonment. The applications do not embrace requests for issuance of certificates of public convenience and necessity to permit the abandonment of any of the above described lines or segments of lines. Applicants assert that the determination as to whether to seek permission to abandon the lines in question would be deferred until after the unification proposed is accomplished and that final determination on abandonment applications would be predicated upon prevailing judgments after other aspects of unification are accomplished. Consequently, any savings to be realized therefrom are not applicable to these proceedings and should be excluded in connection with any consideration given herein.

3. *Study III* dealt with estimated effect of proposed consolidation on expenses at locations other than the common points and duplicate lines included in studies I and II. Those effects are caused primarily by changes in volume of traffic resulting from rerouting. A study of traffic volume during 1955 for each of the "traffic density districts" for Great Northern, Northern Pacific, Burlington, and SP&S was compared with the volume anticipated by New Company after consolidation. All lines where changes were considered as affecting maintenance practices and use of physical facilities were studied. The results of the study by its eight component sections are shown in the following tabulation:

	Net Cash Gain	Annual Savings
Operating costs at intermediate points	$ —	$1,708,351
Joint facility costs	—	254,890 L [22]
Changes in track facilities at intermediate points	3,089,801	798,930
Changes in maintenance costs at remaining facilities	—	4,224
Icing facilities	181,614	50,092
Passenger operations between Spokane and Sandpoint	33,000 L [22]	16,294
Freight train costs near Seattle and Portland	—	86,513 L [22]
Centralized traffic control	5,003,819	250,191
TOTAL	$8,242,234	$2,486,579

The Wyer Report proposes that internal rerouting of traffic to the shortest or most economical routes available over the lines of the consolidated company viz., from Great Northern to Northern Pacific between Minneapolis and Casselton, and between Sandpoint and Spokane, and from Northern Pacific to Great Northern and SP&S between Casselton and Sandpoint, and between Spokane and Seattle and Portland, would result in less need for switch engine service and operating personnel on the line from which traffic is taken. With construction of new yard facilities at Seattle, Spokane and Minneapolis (Northtown) together with increased use of existing retarder yard facilities at Minot and Pasco, it would not only be possible to route increased traffic over preferred transcontinental routes with little increase in operating forces at intermediate points, but would permit decrease of such forces at such points as Whitefish and Wishram. The original estimate based on 1956 conditions reflects a net reduction of 28 switching engine shifts per day, and 56 yard clerks, telegraphers and yardmasters. As of July 1960, however, applicants had already eliminated

[22] Loss.

one 7-day shift (Northern Pacific) at Livingston, two 7-day shifts (SP&S) at Wishram, and 17 telegraphers at various points. Thus, the proposed elimination of an additional 25 switch engine shifts and 39 clerks, telegraphers and yardmasters would result in estimated annual savings of $1,708,351.

In connection with joint facility costs, contracts with other railroads, which provide for division of expenses on a use basis, would be affected by proposed rerouting of traffic. Some of the more important joint facilities are: (1) That use by Milwaukee of Northern Pacific line at St. Paul-Duluth and joint use of Duluth terminal; (2) That use by Soo of Great Northern's ore handling facilities at Superior would result in savings of approximately $50,000 accruing annually to Soo; (3) That change in volume of traffic on joint trackage between Tacoma and Vancouver, Wash., would result in a net loss to Union Pacific of $19,371, annually, including a partial offset of gain from operation of the joint terminal at Butte. The proposed abandonment of a portion of the line Hinckley-Duluth would require negotiations with Milwaukee. The Wyer Report assumes Milwaukee would agree to use the present Great Northern line between Hinckley and Superior as such use would be to the financial advantage of both parties, estimates that the resulting changes in the division of costs would reduce Milwaukee's costs $224,261 annually and that such savings, together with other minor changes included in other studies would be of interest. It is significant that the proposed future abandonment of the Carleton-Hinckley segment is not included in this application and should therefore be excluded from any consideration in connection with the subject proceedings. The result of all joint facility changes not included in studies I and II aggregates an anticipated loss of $254,890 to New Company. Studies I and II show savings of approximately $505,854 in joint facility expenses or net savings to New Company of approximately $250,964. After excluding savings in study II, net savings applicable to subject proceeding would approximate $248,810.

The proposed changes in track facilities at intermediate points would result in surplus trackage which would

profitably be removed. Those are principally unneeded doubled track segments which can and may be converted to a single track, and portions of certain yards and unnecessary sidings. Also, with the remaining light traffic block signaling between Sandpoint and Hillyard (Spokane) on the Great Northern could be removed. Applicants maintain that the track changes permitting savings of $798,930 annually with a net cash gain of $3,089,801, would result in improved service in the areas where such changes are proposed.

The study of the variation of maintenance costs with use was made wherever the net increase or decrease in traffic over a line would exceed 500,000 gross tons annually. Resulting changes would produce a net annual savings of approximately $4,224. Changes on the Burlington would largely offset each other and were disregarded.

Because changes proposed initially in the rerouting of traffic would change the flow of perishable traffic, certain icing facilities at Willmar, Minn., Fargo, N. Dak., and Quincy, Wash., would be changed or eliminated. Subsequent to the initial recommendation facilities at Willmar (Great Northern) and Dilworth (Northern Pacific) were eliminated. Thus the remaining icing facility at Quincy, Wash., if eliminated as proposed, would result in a net cash gain of $181,614, and annual savings of $50,092. However, costs for additional facilities required were covered in study I.

Because the proposed increased use of Northern Pacific passenger facilities (and discontinuance of use of Great Northern's passenger facilities) at Spokane, all present Great Northern passenger trains between Spokane and Sandpoint would be routed via what is now Northern Pacific trackage. That routing is necessary because of difficulties which would be involved in crosstown movement to reach the Great Northern Spokane-Sandpoint trackage and also because the Northern Pacific line between those points is shorter. In order to serve the intermediate local business at Priest River, Idaho, and Newport, Wash., it is proposed to operate a combination bus-truck between Spokane and Sandpoint. Authority is

not sought in the subject proceedings for substitute motorbus-truck service. Therefore, any cash requirement for outlay of equipment (as originally planned at a cost of $33,000), and any savings applicable thereto have been excluded for the purpose of these proceedings. Because of proposed rerouting of through present North Pacific freight service from the line between Auburn and Yakima, it is anticipated that an overnight time freight between South Seattle Yard and Yakima would be necessary in order to provide service to the Auburn-Yakima area. In addition, the rearrangement of tieup points within terminals would shorten runs of some Northern Pacific crews from Stacy Street Yard, Seattle, to South Seattle, and lengthen the run of an SP&S crew from Vancouver, Wash., to Portland, Oregon. The described changes would result in an annual loss of approximately $86,613 to New Company. All other changes in crew costs at those terminals were considered in study I.

In connection with centralized traffic control (CTC) installations, the Wyer Report indicates that both Great Northern and Northern Pacific have long range plans for installation of CTC which would be accomplished over a period of eight years at a total aggregate cost of $10,709,312, for the following project sections:

	Line	Miles	Present Line
1.	Gregory, Minnesota to Philbrook	31	NP
2.	Casselton, N. Dak., to Surry, via Absaraka	210	GN
3.	Casselton, N. Dak., to Nolan, via Vance	27	GN
4.	Minot, N. Dak., to Des Lacs	14	GN
5.	Wheelock, N. Dak., to Williston	22	GN
6.	Bainville, Montana, to Shelby	376	GN
7.	Blackfoot, Montana, to Sandpoint, Idaho	300	GN
8.	Sandpoint, Idaho, to Irvin, Wash.	60	NP

It is indicated that such work would be performed in any event regardless of consolidation for the eight sections subsequently described. Therefore, no expense has been

allocated against the consolidated proposal. CTC permits a dispatcher to double the traffic one set of rails can handle, by shunting one of two trains on to strategically placed sidings. More recently, with the advent of the electronic equipment, CTC machines have developed, which enables a single dispatcher to control far greater lengths of track, thus allowing for the abandonment of many old, short range manually operated stations.

Consolidation would, in addition, relieve the two Northern Lines of an expense of $4,765,542 which the original Wyer Report indicates would be avoided by consolidation on the basis of not requiring certain segments of CTC presently planned which would be required under separate operation. That amount is credited to consolidation, together with annual savings of $238,277 on the investment. As updated, the Wyer Report indicates net cash gain was increased to $5,003,819 and annual savings increased to $250,191, to reflect conditions and cost levels of July 1, 1960. The eight projects listed represent segments to be retained by New Company and constitutes approximately 1,040 miles of main line, at an estimated cost of $10,709,312. Because such projects have been programmed as part of long range plans by Northern Pacific and Great Northern does not exclude such expenditures from consideration under proposed consolidation. As of the conclusion of the hearings herein such work was not in progress. The Wyer Report states that "projects 1 and 8 estimated to cost $1,497,881 are of first priority in order to obtain necessary track capacity, and the remainder of the work should be spread over an eight year period." Projects 1 and 8 aggregate 91 miles; 31 Gregory to Philbrook, Minn. (NP), 60 Sandpoint to Irvin, Wash. (NP). The remainder of the projects are on Great Northern. On the basis, it is reasonable to conclude that the cost for the installation of CTC is definitely a part of consolidation and such costs should be included therein. Therefore, the net cash gain for centralized traffic control is reduced to a net cash requirement of $5,705,493 and annual savings would be reduced to reflect a loss of $285,275.

In summary, the foregoing conclusions in respect of study III modify and change the estimates as portrayed in the Wyer Report net cash gain $8,242,234, with concurrent annual savings of $2,486,579, to net cash gain (cash required) of $2,434,078 with concurrent annual saving of $1,934,819.

4. *Study IV* dealt with savings which would accrue following unification from elimination of duplicate freight service as a result of realignment of services particularly through consolidation of tonnages of the Northern Lines between the same major terminals. Savings of $1,697,725 in consolidation of freight train service between Twin Cities-Duluth, Twin Cities-Winnipeg, Twin Cities-Fargo-Grand Forks, and Seattle-Portland, which would be accomplished within one month following unification would result from elimination of duplicate freight train service ($991,321), estimated savings from reduction in freight train service on the SP&S ($706,404). In addition, an estimated number (11) of diesel locomotive units, or one each from Twin-Cities-Duluth, Carlton-Duluth, Twin Cities-Fargo, Minneapolis-St. Cloud-Staples, and Centralia-Vancouver, two from Vancouver-Spokane and four from Seattle-Portland, that could be released. Under unification, freight train efficiency would be improved by operating heavier trains. Similarly, the operation of numerous light trains by SP&S to meet the difficult connecting schedules of Great Northern and Northern Pacific would result in a potential reduction of expenses following unification. The study was based on several defined test periods in 1956 and the results were projected to an annual basis. Insofar as it deals with operations involving SP&S between Vancouver and Scribner, ruling grades were an influencing factor requiring imposition of higher costs under present operations as indicated. Under unification, that situation would be minimized as the present number of light trains would not be required to be operated.

The Wyer Report does not indicate with any degree of clarity the relationships between the number of diesel locomotive units released and the proposed abandonment of duplicate lines set forth therein and not within the

framework of or part of the unification proposal presented here for consideration.

5. *Study V.* Subsequent to submission of the original Wyer Report and because of continued decline in passenger traffic Burlington consolidated the Northern Pacific's "North Coast Limited" and Great Northern's Empire Builder" and Burlington's "Afternoon Zephyr" between Chicago and St. Paul, which procedure can be affected under present conditions for all except three months (June 15 to September 15) and a month during the Christmas Holiday season.

Under the operation all Great Northern and Northern Pacific equipment moves through between St. Paul and Chicago intact in order to maintain the separate identity of the separate trains, competitive between the two Northern Lines, permitting savings in locomotive miles and train miles for eight months of the year but not in cars and car miles. Under unification applicants anticipate reducing train consists east of St. Paul which would permit consolidation of the trains during the four excepted months described above as well as during the balance of the year, thus producing savings in cars and car miles throughout the year.

Present cars operated between St. Paul and Chicago under coordinated operations aggregate 23; whereas under unification only 17 would be required. During the four excepted months described six additional cars required under present coordinated operations would not be required under unification resulting in annual estimated dollar savings of $490,856, composed of: Train and engine crew wages, plus payroll taxes $87,052, locomotive costs $49,041, passenger train car costs, excluding Pullman cars $123,127, Pullman cars $50,303, dining car operations $115,801, joint facility charges at Chicago and St. Paul $40,088, switching costs $25,444.

6. *Study VI* had for its purposes (1) the determination of the shortest or most economical joint through routes available in the event of consolidation, as the preferred routes for the new consolidated company for handling through freight, including those routes where service could be improved, and (2) evaluation of resultant

savings and expenses. In general, while the shortest routes would be preferred, under certain circumstances because of adverse grades or mountain ranges to be crossed, a longer route might be more economical, and those considerations required hard analysis of existing plant and facilities. That approach was made on the basis that benefits to shippers from the shorter or more economical routes would be obvious, in that faster times would result, either translated into faster schedules or greater dependability on existing schedules, together with lower costs, which, in turn, would present more effective competition with other modes both servicewise and ratewise. The study comprised (1) an analysis of all available alternate routes, including mileages, ruling grades, capacity to handle traffic anticipated after consolidation, helper operation, and service requirements, and while costs were the determining factor in most instances, in some instances longer routes were chosen for service reasons, and (2) an analysis of traffic susceptible of being rerouted, based on a waybill evaluation of the traffic of the two Northern Lines and SP&S conducted by each of the railroad applicants for use in connection with studies II, VII and XVII, as well as the study VI, all herein described, dealing with carload freight traffic, and traffic gained, lost or rerouted.

The selection of the transcontinental and alternate routes available between St. Paul and the Pacific Coast was the most important single decision. The study showed that the principal preferred route of this kind which would be possible as a result of unification would be a transcontinental route between Northtown, the location of the St. Paul-Minneapolis proposed consolidated freight classification yard, and the north coast terminals such as Portland and Seattle. By the availability of the shortest or most economical route, which would combine segments of the lines of Great Northern, Northern Pacific and SP&S, gross ton miles would be reduced and more favorable grades would be available. The routes studied between Minneapolis and Casselton resulted in the conclusion that the Northern Pacific Line (258 via Staples) with double track, favorable grades, and favorable sight

for location of the new Northern electric classification yard would be preferable to Great Northern's routes via St. Cloud and Willmer (262 miles), that the route between Casselton and Sandpoint showed the Great Northern line was shorter via Minot, (1,101) than Northern Pacific lines via Laurel (1,187), and that Great Northern's line would be used by the unified company as part of the preferred through route rather than the line of the Northern Pacific as the Great Northern line crosses the Rocky Mountains only once at the Continental Divide at Marias Pass [23] whereas the Northern Pacific line crosses two mountain ranges; between Sandpoint and Spokane the Great Northern line (69 miles) was less desirable than that of Northern Pacific (65 miles) whose grades were more favorable, in addition to which the only suitable location for the expanded yard at Spokane is on the Northern Pacific; that between Spokane and the Pacific Coast three lines were available, the Great Northern line via Everett to South Seattle (343 miles), the Northern Pacific line via Pasco and Auburn (392 miles), the SP&S line via Vancouver and Northern Pacific to Seattle (542 miles), and it was concluded that the Great Northern line to Seattle would be preferred over the others, and though shorter would have heavier grades but was most economical. The Northern Pacific line via Auburn would be used only for local traffic between Auburn, Pasco, and Marshall.

Other optional routes were likewise considered, principally use of Burlington to Chicago, East St. Louis and Kansas City west. From Chicago and East St. Louis the route via Minneapolis is preferred over the route via Laurel, as shorter and more economical and with other favorable considerations such as the new yard facilities at Minneapolis, and that from Kansas City the route via Laurel is the preferred route as the shortest (1,687 miles as against 1,895 miles via Sioux City and Casselton).

In addition to the principal preferred through routes, secondary through freight routes following consolidation

[23] Altitude 5213 feet—the lowest railroad crossing of the Continental Divide north of the Southern Pacific.

were also analyzed and determined. There is attached appendix K-1, a map depicting the principal and secondary through freight routes and other optional routes selected, together with appropriate indices showing mileages between significant points. Likewise appendix K-1 reflects the mileages of the proposed new routes under unification between principal points and the mileages between the same points over the present direct routes of the applicant railroads separately. There is also attached appendix K-2, chart showing related comparative profiles and mileages of those principal routes St. Paul-Spokane, and Seattle-Pacific Coast.

It is anticipated that the rerouting of freight traffic, as contemplated by this study VI, may be accomplished immediately upon unification, except: (1) traffic on trackage between Scribner and Fort Wright, Wash., on the west, and Sandpoint, Idaho, on the east, pending completion (three years) of facilities at Spokane, though interim arrangements would accommodate traffic flow during construction and (2) traffic through terminals at Seattle and Twin Cities during yard construction, with interim arrangements for traffic routing.

The summary updated to July 1, 1960, of data dealing with estimated savings carload freight-shortest or most economical point routes is concerned with two phases. First, estimated savings on freight train out-of-pocket costs total $3,630,910, composed of Burlington $581,837 (gain), Great Northern $4,641,161 (loss), Northern Pacific $9,137,885 (gain) and SP&S $1,447,661 (loss). The savings were predicated on estimated net change in gross ton miles (in 1,000's) on districts where train service would be affected, resulting from reroutings, totaling 2,641,880 (decrease), summarized as follows: Burlington 557,431 (decrease), Great Northern 3,757,221 (increase), Northern Pacific 7,356,596 (decrease), and SP&S 1,514,926 (increase).

Second, dealing with estimate of savings in per diem car days and private line car miles, an analysis of the traffic susceptible of being rerouted was based on a waybill analysis involving a ten percent sample of carload freight waybill abstracts for Great Northern, Northern

Pacific, and SP&S traffic, carried over to study IX-F-equipment pools-freight train cars. The results of that analysis show (1) estimated net changes in gross ton miles (1,000's) on all districts aggregating 2,306,593 (decrease) composed of: Burlington 427,664 (decrease), Great Northern 3,973,531 (increase), Northern Pacific 7,378,527 (decrease), and SP&S 1,515,047 (increase); (2) estimated savings in per diem car costs aggregate $321,519 (gain), composed of Burlington $68,548 (gain), Great Northern $610,334 (loss), Northern Pacific $1,096,-016 (gain), and SP&S 232,711 (loss).

Despite the details of the study, in the opinion of the hearing examiner, while the savings represented by this phase of the Wyer Report are indeed substantial and of prime importance, it does not appear likely that total savings of $3,630,910 would be realized merely by use of shorter or more economical routes. No doubt some reduction in mileage would result, but it appears that such savings as would accrue would be a relative matter in that they would be contingent upon and subject to fluctuations in operating expenses, traffic trends, general business conditions and other economic factors affecting operations. Because of those factors which are important influences in the success of any operations, the anticipated savings must be predicated on something more than the basis advanced by the consultants, viz. the out of pocket costs predicated on estimated changes in gross ton miles. While consideration is given to the allowances advanced by the consultants, the examiner considers such allowance as marginal, and suspect of scrutiny.

7. *Study VII* involved a determination of the amount of carload freight presently handled by one or more of the separate applicant railroads which could be handled for a longer haul by the consolidated company, with the resultant net increase in earnings by reason of improved service.

Under present operations traffic handled by the Northern Lines from the west to St. Paul and destined to Chicago and beyond may be interchanged with any one of the several railroads east of St. Paul. Presently, Burlington handles less than one-third of the total of that

traffic. Upon unification, it is anticipated that a greater proportion of that traffic could be secured for longer haul via the consolidated company than presently obtained by Burlington. The same potential exists with respect to traffic from Chicago destined to the west coast. Similar possibilities exist on many other lines, the more important of which include greater use of Great Northern's line to Sioux City for Northern Pacific freight to and from the south now interchanged with foreign lines at St. Paul or other points, and of Oregon Trunk-Great Northern line to Bieber for Northern Pacific traffic to or from California now interchanged with foreign lines at Portland or other points.

The original waybill analysis made by each railroad applicant predicated on 10 percent of all interline carload freight during 1955 was developed showing by commodity the cars, tons, origin and destination, routing and revenue, except for iron ore and coal traffic handled by the Northern Lines and interline forwarded, interline received by Burlington which would not be susceptible to longer hauls. No additional longer hauls were anticipated on SP&S as a result of unification as traffic now handled by that railroad is routed over the Northern Lines to the greatest extent possible. The waybill analysis results were projected to represent annual estimates by multiplying by the factor 10. Of the interline cars (total 124,790 of which 36,867 are cars with potentially longer hauls) included in the waybill analysis by each of the railroads it was estimated that 3.6 percent of Burlington cars (or 1,455), 34.9 percent of Great Northern Cars (or 16,404), and 50.8 percent of Northern Pacific cars (or 19,008), an average of 29.5 percent (36,867), were susceptible to potential longer hauls. The greatest potential is shown by Northern Pacific with slightly over half of its interline cars involved susceptible to longer haul. More possibilities of longer hauls exist for Northern Pacific freight than for Great Northern because of the greater possible use of Great Northern's Sioux City line and the Bieber gateway, whereas Northern Pacific has no comparable lines offering a longer haul to Great Northern traffic, and both lines have equal access to Burlington for a

longer haul. Burlington percentage is not comparable as all cars handled jointly by Burlington with either Great Northern or Northern Pacific are included in the cars for the two Northern lines, and because Burlington handles such a large number of cars in its own territory to and from eastern, southern and western states that would not be affected by unifications.

Each of the railroad applicants made its own estimates of potential longer haul traffic, Burlington applying percentages to a variety of commodities interline forwarded 10-40 percent, interline received 10-30 percent and interlined intermediate 10 percent. Great Northern reviewed each commodity for each class of traffic, forwarded received and intermediate, and estimated the proportions potentially available for solicitation on the basis of conditions surrounding each case. Increases varied from 5 to 30 percent and the highest percentages were applied to forwarded traffic where it was believed the greatest influence over routing would be exercised. The overall weighted percentage increase was 17.9 percent. Northern Pacific applied essentially the same factors as a basis for judgment percentages but instead of applying separate percentages to each commodity estimated increases of 20 percent for interline forwarded and received freight and 15 percent for intermediate freight, with certain exceptions, such as California traffic via Bieber, traffic handled via Sumas to Vancouver, B. C., present two-line hauls that would become one-line on unification, and freight from Great Northern stations now handled by Soo or Milwaukee because no joint Northern Pacific-Great Northern rates in effect, all percentages applied varying from zero to 100 percent. Valley Railroad utilized the same methods as Northern Pacific. SP&S traffic is routed over the two present companies to the greatest extent possible and no additional longer hauls are anticipated. The estimated percentage of total cars that could be secured for a potential longer haul for the consolidated company based on cars handled in interline forwarded, interline received and interline intermediate was estimated at 15.7 percent (2,288 cars) by Burlington, 19.5 percent (31,970 cars) by Great Northern and 24.3 percent (46,200 cars)

by Northern Pacific, an average of 21.8 percent (80,458 cars), which would result in a potential additional annual net revenue of $10,788,651, inclusive of net revenue on 180 cars from Valley Railroad.

In view of the potential additional annual net revenue involved and since it pertained only to interline traffic, which does not always follow the same trend as local traffic, the study was reviewed and analyzed in 1960 in order to be reassured that it reflected normal conditions as far as could be then determined. A comprehensive review of the data compiled in the original analysis was made for each commodity in each of the three groups, interline received, forwarded and intermediate, for the years 1955 (the year of the original analysis), 1957, and 1959. The re-analysis, adjusted to reflect 1960 conditions, rates and costs, revealed estimated potential additional revenue of $12,044,709, (which includes additional net revenue $19,751, on 180 cars from Valley Railroad), less allowances for corrections, adjustments, etc. $293,801, and estimated additional freight train-out-of-pocket cost of handling $1,483,531, or an estimated net increase in earnings of $10,561,178, which would potentially accrue to the consolidated company. These data are subject to the same comments of the hearing examiner as indicated in Study VI, supra.

Diversions of traffic from other lines and modes is discussed elsewhere herein.

8. *Study VIII* involved determination of the extent to which, and estimate of, the savings would be realized from greater efficiency in the loading patterns of less-than-carload (LCL) freight cars. There are many common terminals served by two or more of the four principal railroads involved, and in many instances two LCL cars are operated daily between the same pair of stations by two of the railroads involved. The loading of LCL cars generally approximates between three and four tons per car, compared with 25 tons for the car itself. Upon unification, such cars would be consolidated, permitting heavier loading in one car, and saving the cost of handling the second car. In order to determine the extent to which LCL cars could be consolidated, a complete analysis of all

LCL freight, including LCL handled on piggyback or trailer on flat car (TOFC) trailers, was made for a test week November 12-18, 1956, inclusive. The data utilized reflected cars loaded each day, the weight of the shipments to each destination handled by the car, and the total weight of LCL handled in each car. The LCL freight actually handled during the test week was analyzed as to origin and destination, and a number of consolidated cars set up to common destinations to handle all freight offered each day, using a maximum of 10 tons of freight per car, and if additional tonnage was shipped that day, an additional car was set up to accommodate it. The number of trailers actually used was also similarly analyzed, and a corresponding number set up to handle the business of the unified operations. Thereafter, a comparison of the number of cars required, and loaded car miles and gross ton miles under unification was made with existing operations to determine the savings. In certain instances, empty refrigerator cars, where available, were used for LCL loading, particularly during periods of box car scarcity.

In summarizing the data developed during the test week, it was ascertained that the four railroads separately utilized a total of 159 trailers LCL, 147 flat cars for trailers LCL, and 2,196 LCL cars—box and refrigerator, or a total of 2,343 LCL cars transporting 6,331 LCL tons, averaging 2.70 LCL tons per car, resulting in 807,486 loaded car miles or 22,706,059 gross ton miles; that consolidated operation would require 125 trailers—LCL, 81 flat cars for trailers of LCL, and 1,773 LCL cars—box and refrigerator, or a total of 1,854 LCL cars to handle 6,331 LCL tons, which would average 3.41 tons per LCL car, resulting in 600,732 loaded car miles or 17,597,926 gross ton miles, thus producing an estimated saving of 34 trailers—LCL, 66 flat cars for trailers of LCL and 423 LCL cars—box and refrigerator, or a total of 489 LCL cars, or 206,754 loaded car miles with corresponding gross ton miles aggregating 5,108,132, producing an estimated out-of-pocket train costs under unification on an annual basis aggregated $442,904. Since both Great Northern and Northern Pacific conduct highway truck

operations in Montana with but one common route operated between Butte and Helena, it was estimated one would be eliminated with estimated annual savings of $20,956; and that the number of trailers would be reduced by five units of $4,160 annually in rental, or a total estimated savings of $468,020.

However, since 1956 the volume handled on the lines under study decreased approximately 20 percent, and it is not anticipated that the amount of decrease would be recovered. The data revised to reflect a more realistic appraisal of the circumstances as a result of the decrease in volume, shows total estimated savings under unified operation of $455,888, composed of out-of-pocket freight train costs and reduction of gross ton miles handled $428,052, elimination of truck schedule Butte-Helena $23,052, and savings of rental of 5 trailers $4,784. Significantly, no proposal in respect of unification of the motor truck operations is presented, and such savings as are believed would result from elimination of highway operations which are duplicative are highly illusory.

9. *Study IX* dealt with equipment pools accomplished in four sections (1) diesel locomotives, (2) freight train cars, (3) passenger train cars, and (4) work equipment, and had for its purpose the determination of an estimate of savings which could be realized under single operating control by use of the subject classes of equipment under conditions created by unified operations, giving due consideration to elements bearing on utilization, release of unneeded equipment, charges, potential avoidance of unneeded purchases, and net savings in each section. The results of this study produced the second largest category of economies anticipated aggregating $3,343,697, with net cash realized of $8,069,356 (which is modified by other factors herein). The matter of better car supply to shippers resulting from unification is discussed elsewhere herein.

In the study of diesel locomotives (IX-L), both freight and passenger operations and the respective pools of the four principal railroads were analyzed. Freight operations indicated that layover of locomotive equipment now utilized on one road could be better utilized on specific

longer runs on a unified basis permitting substantial savings. Passenger operations developed still greater savings under a unified basis, and it was demonstrated that the equipping of both freight and passenger locomotives to permit pooling operations (in such areas where there are differences in cab signals, gear ratios, fuel and water capacity, etc.), at a cost of $189,800, would minimize many of their present problems.

The Wyer Report, revised to reflect cost levels as of July 1, 1960, improvement of car handling per engine hour, and accomplishment of certain changes previously proposed, shows a net release of units of diesel locomotives as a result of the various consolidation studies, as follows: study I—62 units, study II—13 units, study III—8 units, study IV—11 units, and study IX (diesel locomotives) 31 units, or a total of 125 units, producing a net cash realized from consolidation (i.e., 64 switch locomotive units at $92,600, or $5,926,400, and 61 road switch locomotive units at $156,560, or $9,550,160, less 50 percent of cost new ($7,738,280) and less cost of equipment changes to effect pool operations ($189,800), or $7,548,480. Estimated savings in expense as developed aggregate $377,424 and annual depreciation [24] aggregates $688,603, or a total annual saving as result of consolidation of $1,066,027. However, it is recognized that certain savings herein are predicated on abandonments mentioned in study II which data is disregarded. The amounts involved would reduce the savings and cash realized by discarding the savings attributed by study II, viz. 12 units or 1 switch locomotive unit and 12 road and road switch locomotives. As revised, the figure would be 112 units of locomotive producing a net cash realized from consolidation i.e. 63 switch locomotives at $92,600, or $5,833,800, and 49 road and road switch locomotives @ $156,560, or $7,672,340, less 50 percent of cost new ($6,753,070) and less cost of equipment charges to effect pool operations ($189,800), or $6,563,270. Estimated savings in expense, as revised, aggregate $328,164 an annual depreciation

[24] 3.88 percent on switch locomotives; and 4.90 percent on road and road switch locomotives.

aggregates $602,296, or a total annual savings as a result of consolidation of $930,460.

The portion of the study—freight train cars (IX-F)—was accomplished to determine how operations on a unified basis, which, while promoting acquisition of additional freight traffic or longer hauls on existing traffic, would increase use of freight cars, would reduce freight car miles and days through elimination or reduction of existing delays, use of shorter joint routes, and elimination of duplicate car supply and service. As updated to July 1, 1960, which reflected a reduction in volume of less than carload freight moving compared with 1956, the Wyer Report shows that analysis of operations as disclosed by studies I, II, VI, VII, VIII, and XVII therein, all discussed elsewhere herein, would permit savings in the form of decrease in per diem car days aggregating $638,997, and decrease in mileage car miles of 5,219,288, resulting in savings of 639,097 car days at $2.88 per day, or $1,840,312, 3,287,027 refrigerator car miles saved at 4.35¢ per mile, or $142,986, and 1,932,201 tank car miles saved at 5.5¢ per mile, or $106,271, or a total of $2,089,569. Accomplishment of pooling such equipment would occur on effective date of unification, with plans developed in advance to permit centralized control of freight car supply to insure maximum availability and equitable treatment of all areas of system. It is recognized that certain savings herein are predicated upon the abandonments mentioned in study II. The amounts involved are relatively small and would not materially affect the net result above mentioned.

The study of passenger train cars (IX-P) was made to determine how operations on a consolidated basis would produce savings and the nature of the savings realizable by pooling equipment on a unified basis, as well as savings resulting from release of passenger equipment as a result of other studies herein. Analysis disclosed some limited economies permitting reductions in passenger car pools, particularly in that (1) some equipment now held at common points for emergency purposes would be released avoiding duplication, (2) rearrangement of passenger trains by consolidating terminal operations at cer-

tain points, elimination of service on duplicate lines, and (3) through operation of dining cars would reduce need for some equipment. As updated to July 1, 1960, which reflected elimination of allowance for discontinuance of certain trains and salvage accruing therefrom, the analysis shows net cash realized from elimination of a total of 27 passenger cars with a scrap value of $80,285, with concurrent estimated annual savings aggregating $48,-847.

The portion of the study (IX-W) dealing with work equipment (equipment utilized in maintenance of way and structures, and in operations) was essentially an estimate of major units of existing work equipment which could be released, or of new equipment, the purchase of which would be avoided, as a result of consolidation. In determining net cash realized from consolidation, analysis of maintenance of way and structures showed that certain items of net work equipment, comprising one rail detector car at $100,000, four combination pile drivers at $140,-000 each, one power tamper at $45,000, one dragline at $45,000, and two tractors and scrapers at $40,000 each, required by the four railroads, if separate operations were continued, would not have to be purchased under consolidated operation. Net cash realized is computed: the estimated cost $830,000, or on a basis of 50 percent of cost of new equipment $415,000, to which was added savings accruing from salvage through the elimination of 11 derrick wreckers, which would no longer be required under consolidation $25,591, or a total of $440,591, together with 5 percent interest therein of $22,030 ,or $462,621. In addition, estimated annual savings in expense consisting of estimated normalized maintenance $69,857, payroll taxes thereon $3,779, annual depreciation on equipment not purchased or released $37,880, estimated cost of keeping wreckers hot in winter months $5,708, and annual interest at 5 percent on 50 percent of cost of new equipment not purchased, and 100 percent of salvage value of old equipment released amounting to $22,030, or a total of $139,254.

10. *Study X* dealt with general repair facilities and was divided into four parts, namely, diesel locomotives,

freight train cars, passenger train cars and work equipment.

The purpose of the diesel locomotive study (X-L) was to estimate the savings and other efficiencies that might result from the consolidation of general repair facilities and forces required in making heavy repairs to diesel locomotives. When the study was prepared, the four railroads involved had not completed conversion from steam to diesel power. Therefore, diesel maintenance practices on the four railroads had not yet fallen into an established pattern, and a basis of past experience from which to estimate savings from consolidation of general repair facilities is lacking. However, total estimated savings summarized ($2,194,535) as well as net cash realized ($1,043,-187), are based on the more extensive experience of certain other roads and also on the assumption that all four applicants have been fully dieselized .

On that assumption, the Wyer Report estimates that total ownership of diesel units after complete dieselization by the four companies would be: Burlington 740 units, Great Northern 690 units, Northern Pacific 670 units, SP&S 106 units, or a total of 2,206, less reduction in units because of savings from unification 128, and, that after unification and dieselization the net number of units would comprise 2,078. Significantly, current data of record shows ownership by Burlington of 692 units, Great Northern 641 units, Northern Pacific 627 units, and SP&S 107 units, or a total of 2067 units. Subsequent annual reports filed with this Commission reflect no appreciable increase in those figures.

Under separate operation heavy repairs to locomotives would have been made at six different repair facilities. However, after unification, it is anticipated that four such shops would be sufficient and that two could be abandoned. The six repair facilities now required are located in West Burlington, Iowa, (Burlington), St. Paul (Dale Street) (Great Northern), Spokane (Hillyard) (Great Northern), Livingston (Northern Pacific), South Tacoma (Northern Pacific), Vancouver (SP&S). After unification, the Great Northern shop at Spokane would be closed, and the work shifted to Livingston and South Tacoma,

and all heavy repair work for SP&S now performed at Vancouver would be shifted to South Tacoma or elsewhere, however, that facility would continue in use for limited light repairs. Those closings would be accomplished gradually over a three-year period to permit construction of yard and diesel servicing facilities at Spokane and South Seattle. It is estimated in the original study that of the 146 employees affected by shifting of the above work, 98 will be added at the new locations resulting in a net saving of 48 employees representing a dollar saving of $262,437, including payroll taxes, maintenance of structure savings of $168,166, 5 percent on net cash realized of $27,111, and rentals of $12,000, or total net savings from unification of $469,719. Net cash to be realized from unification was estimated at $542,215. The revised study as of July 1, 1960, reflects estimated savings of $565,536, consisting of rentals $13,800, expenses saved $492,764, payroll taxes $31,104 and 5 percent interest on net cash realized of $27,868. Net cash realized is revised to $557,353. Expenses saved of $492,764 cannot be separated between maintenance of structures and labor savings, which is a defect in the Wyer Report. While not a major defect, it nevertheless precludes a complete analysis of some phases of the report.

The purpose of study dealing with freight train cars (X-F) was to estimate savings anticipated from consolidation of facilities and forces necessary in making heavy repairs to and constructing, such equipment. The study assumes New Company would have freight car ownership of about 125,000 cars and that such car ownership would be maintained equivalent to present standards under separate operations.

Burlington's principal freight car shop is located at Havelock, and secondary shops are located at Galesburg, Centralia, Lincoln, Omaha and Kansas City. Great Northern's principal freight car shop is located at St. Cloud, and its secondary shops are located at Superior, Great Falls, Spokane and Everett. Northern Pacific's largest shop is located at Brainerd, with secondary shops located at St. Paul (Como), Laurel, Auburn and South Tacoma. General repairs on the SP&S are made only at Vancouver.

Under present operations, all of Burlington's new cars have been constructed at its Havelock shop, approximately 70 percent of Great Northern's new cars have been constructed at its St. Cloud shop, approximately 80 percent of Northern Pacific's new cars have been constructed at its Brainerd shop, and new box cars for SP&S have been built at both St. Cloud and Brainerd. After a comprehensive study of freight train car facilities it was concluded that while unification would permit abandonment of some secondary shops, with their work being performed more economically at other points, the major shops would continue as at present with construction and major closed car repairs performed at St. Cloud and open type car construction and major repairs performed at Brainerd.

Secondary shop points are presently used principally for program repair work and for upgrading of cars to meet local and special loading requirements. Under unification, Northern Pacific's Como shop at St. Paul and Great Northern's Hillyard shop at Spokane would be abandoned with equivalent forces and facilities provided at South Tacoma. The heavy freight car repair work at Hillyard would gradually decrease as all men now employed at Hillyard and Parkwater (Northern Pacific) would be required to handle light car repairs. The Northern Pacific men would be needed at Hillyard during the interim when new Spokane yard at Yardley is under construction. During the three-year period of construction, all would be moved to new yard. Those lost by attrition would not be replaced. In addition, Great Northern's steel car shop at Superior would be abandoned with the work of maintaining ore cars transferred to Brainerd. Major freight car repair work of SP&S presently performed at Vancouver would be absorbed in shops at Brainerd, Havelock and St. Cloud, and facilities at Vancouver would continue to be used only for cleaning and upgrading cars, without change of supervisory force. Also, after unification, wheel shops at Hillyard, Brainerd, Como (St. Paul) and Vancouver would be abandoned. That work presently performed at Brainerd and Como would be transferred to Jackson Street (St. Paul), while wheel work presently performed at Hillyard and Vancouver would be transferred to South Tacoma shop.

The original study based on 1955 data estimated net cash realized of $190,058, net savings of $751,865 and a net decrease in employees of 149 (total employees affected by abandonment of shops and transfer of activities —515). Labor savings in dollars aggregated $660,402 and savings in payroll taxes totaled $45,955. The study as updated to reflect increases in costs as of July 1, 1960, estimated net cash to be realized from unification of $199,409 and net estimated savings of $933,834. The study as updated is not presented in a manner that will permit an analysis of the increases reflected therein.

The purpose of the study dealing with passenger train car repair facilities (X-P) was to determine estimated savings from consolidation of heavy repair facilities and forces required in making repairs to passenger train cars. It is assumed that the present passenger car fleet of approximately 2,380 cars would be maintained at existing standards of maintenance.

The principal Burlington passenger car shops are located at Aurora, with Great Northern and Northern Pacific shops located in St. Paul, and SP&S shops at Vancouver, Wash. After comprehensive study of such repair facilities, the Wyer Report concluded that after unification the passenger car fleet could be efficiently maintained at Burlington's Aurora shop, and the Northern Pacific's Como shop, except that wheel work presently handled at Brainerd and Como shops would be concentrated at Jackson Street (St. Paul) with improvements in efficiency from both moves. The Como shop would be operated on a two-shift basis, using shop forces now working at Jackson Street, but with savings in supervisory and clerical forces. All passenger work after unification would be eliminated at Vancouver. Since the Burlington shop at Aurora has been specifically tooled for maintenance of stainless steel cars, Great Northern's and Northern Pacific's present ownership of 43 such cars would be assigned to that shop for maintenance without involving any additional forces, while Burlington's 13 Cor-Ten steel cars would be maintained at the Como shop.

Estimated net cash realized and potential annual net savings reflected in the original study was $173,223 and

$403,320, respectively. The proposed changes in facilities reflects a net decrease of 56 employees representing net dollar savings in labor costs of $328,287, including payroll taxes of $20,771. The study revised to reflect increases in costs as of July 1, 1960, estimates net cash realized of $182,010 and estimated net savings of $482,786. The revised study is not presented in a manner that will permit an analysis of the increases reflected therein.

The purpose of the study dealing with work equipment repair facilities (X-W) was to establish savings that migth result from consolidation of facilities and forces used in making heavy repairs to work equipment. The study assumes that existing standards of maintenance would be continued after unification, and that the volume of work would remain about the same as at present.

Work equipment repairs for major machines is presently performed at the following shops: Burlington-Havelock with some motor car work at Aurora; SP&S-Vaucouver, Wash., Northern Pacific-Brainerd, Livingston and South Tacoma; Great Northern-Superior and Hillyard. In addition, considerable work is performed at eight division shops not otherwise identified in the study.

After unification, no changes in existing facilities of Burlington is contemplated, and existing forces and practices will be continued. Great Northern's shops at Superior and Hillyard would be abandoned with work forces and equipment transferred to Brainerd and South Tacoma, respectively. Northern Pacific's shop at Livingston would be abandoned and work forces and equipment transferred to South Tacoma with the building at Livingston converted to a diesel truck repair shop. Work presently performed at Vancouver for SP&S would be transferred to South Tacoma. Work performed by division shops would continue as at present.

The study revising the original data, adjusting net cash and net savings to be realized from unification, as of July 1, 1960, reflects net cash to be realized of $104,-415, a net decrease of 13 employees, labor costs saved of $111,266, including payroll taxes of $9,637, and net savings to be realized from unification aggregating $212,379.

11. *Study XI* had for its purpose the determination of potential savings as a result of consolidation from (1) reduction in material and supplies stocks (Account 716), (2) storehouses which could be reduced or eliminated, or which would have to be constructed at other than common points or on duplicate lines, (3) savings which could be made in the purchases and stores organizations, (4) reduction in the price of materials purchased, and (5) additional reciprocal traffic which could be secured. No appreciable savings could be developed in the last two mentioned areas.

Based on inventories as of selected recent dates, combined stores stocks were $48,096,720. Considering details affecting the organization of a consolidated purchasing department and location of principal stores, it was determined combined stores stocks could be reduced $3,054,300 and that a further reduction of $2,360,490 could be affected in certain line and miscellaneous stocks, or a total (A) of net cash realized of $5,414,790, producing savings on such reductions approximating 10 percent or $541,480 annually.

Several changes would be made in storehouses through consolidation of the purchasing departments by locating the consolidated purchasing department at the new headquarters of new consolidated company at Chicago, with a west coast office in Seattle. The changes would involve a major reduction in duplicate stocks and require about 3 years to accomplish. Some would depend upon completion of facilities at yards and shops. With five principal stores at strategic points on what are now the lines of Great Northern and Northern Pacific, and elimination of facilities at a number of other points common to both lines producing (B) net cash realized approximating $5,663, and corresponding savings of $6,032, together with new construction costs approximating $753,280, to which there would result an annual charge of $61,623.

With respect to (C) purchases and stores organization savings, the proposed executive organization would result in reduction of 14 officers with savings of $118,731 annually. Various changes in personnel on a con-

solidated basis would permit a change from the combined separate groups of personnel aggregating 1,971 to a consolidated staff of 1,856, a reduction of 115 employees with a combined wages and salary savings of $813,324, which together with reduction of payroll taxes of $67,106 would permit savings of $880,430 annually.

Summarily, study results would show a net cash realized by consolidation of $4,667,173, and a combined annual savings of $1,366,319.

12. *Study XII* was designed to achieve an estimate of savings which would reasonably accrue to the unified company under consolidation in respect to costs of transportation of company material, particularly that now moving over foreign lines to one of the railroad applicants herein. Considerable company material required for use on applicant railroads is purchased off-line and commercial freight charges are paid to all foreign lines. Analysis indicates savings may be realized in two areas: (1) on freight where it would be possible through change in billing point to reduce net freight charges paid to railroads not involved in the proposed unification, and (2) on freight handled by foreign railroads outside the proposed unification, where a rerouting of the traffic would occur so that a larger portion of the haul may be handled by the unified company, thus reducing freight charges paid foreign lines, which savings would be offset by out-of-pocket costs of handling by the unified company. Upon the basis of updated estimates, the summary of the study shows estimated savings on freight charged as to billing points $17,972, and estimated savings on freight re-routed—revenue saved $172,823, less additional cost of handling $23,474, or $149,349, with total net estimated savings of $167,321.

13. *Study XIII* dealt with proposed organization communications facilities. Plans contemplate they would be consolidated under a general superintendent of communications in a single department at both district and system levels. The general superintendent of communications would also serve as district superintendent in his district and his office consolidated with the district office. While the headquarters staff force would be larger

than the district forces, since engineering and planning would be accomplished at the one location, all working gangs would be supervised at district levels and the forces would be carried on the payrolls, and be under the general jurisdiction, of the division superintendent on whose division they would be working. While the study did not include consolidation of signal and communications forces, except for reporting purposes, there may be other savings without consolidation, but they have not been included. On the basis of the updated data, the estimated savings, revised to reflect increases in costs as of that date, would approximate $460,114, consisting of: Labor saved as a result of consolidation $417,623, R.R.A. unemployment tax $35,498 and health and welfare (3 percent) $12,529, reduced by an annual cost of 5 percent of $423,720 (net cash cost of effecting consolidation)—or $21,186, and additional equipment rental $1,150, and increase or gain in maintenance of way and structures of $16,800.

14. *Study XIV* had for its purpose the determination of an estimate of requirements for train dispatchers under consolidation and estimate of savings which would accrue to the unified company. Analysis of existing forces required for dispatching trains, and work assigned in the operations of Great Northern, Northern Pacific and SP&S, together with that portion of the operations of Burlington from Laurel to Guernsey, showed for each dispatcher's office its location, territory covered, whether single or double track, whether or not equipped with CTC, and whether dispatching by telegraph or telephone. A complete detail of forces assigned, together with description of work assigned, as supplemented by a statement of all train orders issued and all trains handled on a given day (August 23, 1956) was used as a basis for analysis for a typical day. The forces required on consolidation and savings estimated by company salaries, wages and payroll taxes of existing forces required under consolidation, as adjusted to equalize rates of pay for comparable excepted positions on basis of higher rates in effect, were considered.

On the basis of updated data, reflecting increases in costs, it was ascertained that there were employed in dispatchers' offices 19 chief dispatchers, 39 assistant chief dispatchers, 128 dispatchers, 29 car distributors and assistants and 46 clerks and miscellaneous, while under proposed consolidation, there would be required 14 chief dispatchers, 37 assistant chief dispatchers, 114 dispatchers, 28 car distributors and assistants, and 37 clerks and miscellaneous. The total savings estimated which would accrue to the unified company from this phase aggregates $330,809, predicated on total annual salaries and wages of jobs added $366,326, offset by jobs abolished $652,482, plus increase in salaries or wages to equalize rates for excepted positions at higher rates $5,797, or a total estimated savings before allowance for taxes, etc., of $280,359, less allowance for vacations, health and welfare funds (9 percent) $25,231, and allowance for payroll taxes (8½ percent) $25,219, or a total net estimated savings of $330,809.

15. *Study XV.* Each of the four principal railroad applicants has a separate organization of special agents maintaining headquarters at Chicago, St. Paul and Portland, each in charge of a special agent, and all but SP&S have assistants, or a total of four special agents and 11 assistants or a grand total of 15. As updated to reflect increase in costs, the study recommends creation of a new organization with a superintendent of police in charge of the entire organization of the consolidated company, with four district offices. The superintendent would be located at one of the district offices and use the office forces at that point. No change would occur with respect to numbers or salaries, as there would result under consolidation 1 superintendent, 4 assistant superintendents, and 10 assistants, or a total of 15. However, existing forces at local points on the same four railroads would be changed under the proposed consolidation. Those forces comprise 333 positions, of which 165 are located at common points and 168 at other points. Under proposed consolidation forces located at common points would be affected in that only 147 would be required resulting in a reduction of 18

positions. Reduction of forces would occur at Head-of-the-Lakes (2), St. Paul-Minneapolis (3), Fargo-Moorhead-Dilworth (1), Spokane-Hillyard (7), and Seattle-Interbay-Auburn (5). Of the 18 positions, those affected would be three special agents, one assistant special agent, and 14 patrolmen or watchmen, etc. Savings estimated resulting from consolidation as a result of study XV aggregate $124,463 annually.

16. *Study XVI* relates to dining car departments. Each of the four principal railroads maintains a dining car department supervising and operating its own dining cars, lounge cars, etc., and under consolidation those departments would be reorganized as a single supervisory and operating unit. The dining and ranch cars of the two Northern Lines would continue to be operated on the separate principal trains through to Chicago, where they would be serviced and supplied, instead of being switched off at St. Paul as at present. Laundry facilities would continue to be provided at St. Paul and Seattle. Reorganization of facilities would permit savings in one set of equipment, three cars, and in costs of accounting for dining car operations, reflected elsewhere herein, and require transfer of a portion of the functions of the commissary department from St. Paul to Chicago with remaining commissary work of the two separate Northern Lines operated at St. Paul and Seattle to be consolidated at those points. The work of the dining car department of SP&S would be little affected.

On the basis of updated data, there would accrue to the consolidated operation potential and net cash realized from consolidation of $94,492, composed of reduction in inventory of $95,892, less cost of one pulling tractor at 50 percent of cost $2,800, or $1,400, and net savings of $80,136 in the form of estimated savings in salaries and wages of $70,050, less maintenance and depreciation of additional pulling tractor of $420, or $69,630, predicated on a reduction of forces from 155 under separate operation to 143 under consolidated operation (including supervisory, dining car clerks, etc., commissary, and miscellaneous, of 12 positions), payroll taxes saved (8¼

percent) $5,781, and interest on net cash realized from consolidation (5 percent) $4,725.

17. *Study XVII* had for its purpose the determination of effect of consolidation on freight traffic and revenues, excluding the traffic already dealt with in studies II and VII. Updated as of July 1, 1960, the results of the study summarized indicated that estimated net loss of revenues, revised to reflect increases in rate and cost levels, would approximate $1,958,705, allowing for deductions of gain in freight train out-of-pocket costs of $453,396, from loss of gross freight revenues of $2,412,-101, based on an estimated 2,314 "cars lost" during the study period.

The summary is based on estimates of six separate categories of data, showing in five instances certain losses in revenue which might be anticipated from consolidation, with an increase in the sixth instance. The first of the categories (estimated net total loss of traffic at study I common points $785,621, composed of loss of freight revenue $977,424, and increase in freight train out-of-pocket costs of $191,803) is predicated on a study of the traffic at each of the common points served by a foreign line as well as by two or more lines included in the study. All industries at common points would continue to be served by the consolidated company on unification providing service as good as or better than at present. It is noted, however, that it is common practice of some shippers' traffic managers to allocate traffic pro-rata to the rail carriers serving a point which may result in some loss to the consolidated company on unification, since two existing separate companies might have had two-thirds of the total business at a given point whereas after consolidation they might retain only one-half.

The second (estimated net total changes in carload freight traffic at other than common points, because of pro-rata allocation of traffic, of $287,488, composed of loss of freight revenue $354,564, and increase in freight train out-of-pocket costs $67,076) dealt with analysis of the freight traffic of large shippers, such as national accounts, who might allocate their tonnage on a pro-rata

basis, to determine if there would be any losses in addition to those at common points.

The third estimated net total loss of revenue on freight now handled by two lines on two-line rates, which would be handled by one consolidated line on single-line rates, and billing of $38,336, all freight revenue.

The fourth estimated loss of favorable divisions now enjoyed by companies which would be included in the consolidation of $80,742. Present divisions were analyzed to determine if any of them were unusually favorable and might be lost on consolidation. Some loss would occur in traffic moving via Bieber and Chemult gateways to and from points in California and beyond west of transcontinental territory. Smaller losses are indicated on certain select traffic originating on SP&S, destined to points on Milwaukee and Northern Pacific.

The fifth (estimated net increase in freight revenues at other than common points, because of better service, more adequate car supply, etc., under consolidation, of $141,295, composed of $176,777 freight revenue gains, less $35,416 out-of-pocket costs) is predicated on view that while consolidated company would offer better service, provide better car supply, reduce terminal delays, and otherwise improve relations with shippers, it was impossible to estimate revenue gains in advance, except, however, in a circumstance relating to SP&S, involving a grain operator located at Kennewick, Wash., served jointly by Northern Pacific and Union Pacific, but not by SP&S. There is no interchange at that point between SP&S and the named carriers. Because carload grain rates from Great Northern origin points in Montana apply via the latter to Spokane thence Union Pacific to Kennewick and Portland, under unification rates would apply from Montana points to Portland with transit storage at Kennewick, as a result of which it is anticipated that an increase of about 500 cars annually would accrue to the consolidated company.

The sixth (estimated net total loss in freight revenues under unification from other causes $907,813, composed of freight revenue loss of $1,137,746, less freight train out-of-pocket costs of $229,933) was result of analysis

designed to estimate the revenue effect of all unfavorable factors under unification which might cause losses in freight, other than those previously discussed. The consolidated company would operate directly from Chicago, Peoria, St. Louis, Kansas City, and other points at which Great Northern and Northern Pacific have had favorable relationships with railroads other than Burlington. Consolidated company, as unified, would be a direct competitor and relations with foreign lines may depreciate and result in decreased interchange. While the consolidated company with routes directly from Chicago to north coast points may increase its proportion of westbound traffic destined to north coast points, it was believed that some shippers now favoring Burlington with California tonnage on a pro-rata basis might desire to favor those railroads losing north coast traffic with some of the California traffic that now moves via Burlington. Analysis of Burlington's overhead transcontinental traffic produced an estimate of 10 percent reduction on eastbound traffic from California, Nevada and Utah, and a similar reduction on westbound traffic, except on forwarder traffic. Analysis of Northern Pacific north-south traffic to Bieber gateway produced estimate of some diversion of unrouted traffic from Southern Pacific at Portland, and that all company material and unrouted traffic secured from connections other than Burlington at Twin Cities and Duluth would be lost.

18. *Study XVIII* relates to system expenses. Because each of the four principal railroads included in the proposal is currently operated separately, having its own executive and supervisory organization, its own operating department, its own traffic forces, its own records to maintain, and is required to make its own reports to various regulatory authorities, the study had for its purpose the analysis of the existing functions of each of the departments and the costs of operation applicable. In order to estimate the resulting potential organizational economies, it was necessary to make determinations as to a workable and practical plan of organization for the proposed consolidated company which would be able to provide an efficient administration, responsive to local and

national needs and the circumstances of the broad territory under unification.

Cognizant of the size of the proposed consolidated company in that it would be the largest railroad in the country from the point of view of mileage and geographical distribution and the third largest from the point of view of annual revenues, it was determined that a more efficient and economical administration would be provided if the system is divided into districts of convenient size for administrative purposes, that the districts be given the greatest degree of autonomy consistent with centralized control of policy, finances and such other functions as can be best handled on a system-wide basis. It is significant to note that the mileage of the combined lines as separately appended aggregate 24,638 miles counting Burlington 8,799 miles, Great Northern 8,285 miles, Northern Pacific 6,577 miles, SP&S 945 miles, and Pacific Coast 32 miles, and after unification would be reduced to approximately 23,903 miles reflecting elimination of trackage rights held by one system over another. Each district of the consolidated company would be headed by an executive vice president to whom all department heads in his district would report primarily. Those district department heads would report secondarily to their department heads in central headquarters. The department heads in central headquarters, except as to functions exercised on a system-wide basis, would be for the most part staff officers and advisors dealing principally with policy and financial or budgetary control and would not be in charge of day-to-day operations.

Under such proposed organization, the principal functions which would be administered on a *system-wide* basis would comprise: (1) car distribution as between districts, (2) locomotive distribution, (3) through train schedules, (4) engineering involving special work (the bulk of ordinary engineering falling to the responsibility of the districts), (5) mail, baggage, and express operations, (6) overall negotiations involving personnel matters, (7) general relations with other railroads including participation in regional or national railroad association, (8) division of rates, (9) setting of rates, especially where regional

traffic associations are involved, leaving to the districts as much autonomy as consistent with system interests where local rates are concerned, (10) all accounting and treasury work, except disbursement work which would be concentrated entirely on the districts, (11) secretarial work (12) purchasing, and (13) dining car operation. All other functions not so described would fall within the jurisdiction of the district executive vice-presidents and their staffs.

It was assumed that the president and his staff would be located in Chicago, and the chairman of the board and his staff and the law, accounting, and treasury departments would be located in St. Paul. The system would comprise four separate districts: (1) Eastern district, with headquarters at Chicago, comprising all lines of Burlington east of the Missouri River plus all lines reaching Kansas City, Leavenworth, and Atchison and the lines from Napier, Mo., to Wymore and Lancaster, Nebr., (2) Northern district with headquarters at St. Paul, comprising all lines of the Great Northern east of Baineville, Mont., and all lines of the Northern Pacific east of Mandan, N. Dak., (3) Western district with headquarters at Seattle comprising all lines of the Great Northern west of Baineville, Mont., and all lines of the Northern Pacific and SP&S west of Paradise, Mont., and (4) Central district with headquarters at Omaha, comprising all remaining lines of Burlington and Northern Pacific, not included in the above.

Attached appendix K-3 is a chart of proposed organization of the consolidated company, depicting flow of authority and delegation of responsibility.

This three part study, updated to July 1, 1960, to reflect changes effected through improvements in methods and operations, showed the second largest category of economies through unification. The estimated savings, dealing with the subject above, aggregating $10,596,135, involve aggregate reductions in force of 1,340.2 jobs. Of the total estimated savings in the study, the first part shows savings aggregating $4,950,190 and involving estimated reductions in force of 672.7 jobs, and relating to savings from the executive, law, engineering, and account-

ing departments, and numerous smaller departments such as public relations, labor relations, pass bureau, land and tax, general claims and offices of secretary and treasurer, with the largest reductions affecting the accounting department and involving 447.8 jobs. The second part (showing estimated savings from consolidation almost as large, of $4,041,940), covered the estimated reduction of 471 jobs, and other savings from consolidation of the traffic departments, including sales and service, rates and divisions, and outside agencies. The third part estimated that savings of $1,594,005, would result from consolidation of personnel engaged in superintending operations and maintenance, the transportation, signal, mail, baggage and express and safety departments, down to and including the divisional level, with a concurrent reduction in forces of 196.5, the largest reduction in force (81.5) affecting the divisional organizations.

19. *Study XIX* dealt with labor contracts. As consolidation would obviously result not only in reductions in working forces, but also in dislocations and rearrangements affecting many of the remaining employees, the study embraced two channels of inquiry, *first*, estimate[25] of payments that would be required in any approval order by the Commission for the protection of employees deprived of employment or otherwise adversely affected by the consolidation, and *second*, since the rates of pay and working rules under their labor agreements differ somewhat among the applicant railroads and such differences could not reasonably be continued after consolidation, estimate of other effects of consolidation upon labor contracts and estimated cost of equalizing rules and rates of pay.

As a result of developments in this area occurring subsequent to the original Wyer Report, certain changes

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[25] Predicated by application of the conditions prescribed in *New Orleans Union Passenger Terminal Case* 282 ICC 271, herein called the New Orleans conditions. As the record shows, applicants expressed willingness to accord protection in conformity with the New Orleans conditions as restated in *Southern Railway Company —Control—Central of Georgia Railway Co.*, ICC , decided November 7, 1962, subsequently discussed.

were made in basic principles adopted in connection with computation of costs of protecting labor to the extent adversely affected by consolidation. The net result of the data and studies thereon indicated that assumptions made previously in the original Wyer Report were unrealistically high and that better protection could be provided for less cost under principles adopted in the supplemental study as of July 1, 1960, updating the original report. In the supplemental study, it was assumed that anyone deprived of employment because of the consolidation, for whom a job for which he is qualified cannot be provided at the same time or another location, would be paid consolidation allowance provided under decisions of this Commission (100 percent of his compensation for certain periods specified in the Act). Thus, jobs created by attrition could be used more effectively in providing new employment for employees deprived of employment by consolidation, and the relatively few employees who might still be deprived of employment under such arrangement would be assured of full compensation for the specified period until a job becomes available. The supplemental study also recognized that in certain areas where jobs created by attrition could be used to provide for employees otherwise deprived of employment, there may be some time lag, particularly where relatively small groups of employees are involved, and that full compensation would be paid those employees during any such time lag within the specified period.

Costs were based on consolidation allowances, spread out over a period of time, which usually may be greater than separation allowances. Under the Washington Agreement [26] employees deprived of employment may elect to take a lump sum separation allowance in lieu of a consolidation allowance.

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[26] A general agreement as to treatment of employees thus deprived of employment or otherwise adversely affected reached in May 1936, in Washington, D. C., between the labor organizations and the carriers which to a large extent has set the pattern since that date, and which has become known as the "Washington Agreement."

Percentages and estimates assumed management of the consolidated company would coordinate the various steps in accomplishing consolidation to minimize dislocation with a maximum matching (qualification and location) of jobs abolished with jobs added or created through attrition.

Employment of new employees after consolidation would be arranged on terms which would permit employees whose jobs are eliminated as a result of consolidation to be given priority in the filling of jobs, regardless of location on the consolidated system.

Referring to the first line of inquiry, it was estimated that all employees adversely affected by consolidation would have been accommodated within five years after the effective date thereof, and no costs are shown thereafter.

Summarily, the studies indicated that during the five years following consolidation approximately 5,200 jobs would be eliminated, that 4,260 of the employees filling those jobs could be fairly promptly employed locally in jobs created by normal attrition, that of the remaining 940 employees who could not be re-employed locally, 908 could be re-employed by transfer to other locations and to other jobs for which qualified, and the remaining 32 employees probably could not be re-employed immediately at any location but could ultimately be re-employed. Total cost is estimated at $4,961,728, of which about 72 percent represents costs in connection with transfer of employees to other jobs, 17 percent represents allowances to employees temporarily out of employment, and 11 percent represents allowances to employees who for a short time would have to take lower paying jobs, all of which would be chargeable to operating expenses and would become a deduction in computing federal income taxes. At current rate of 52 percent, reduction in income taxes would be $2,580,099, and the remaining cost of $2,381,629 would be borne by the consolidated company. Interest at 5 percent on that amount, or $119,081, is included in the study as a charge against the consolidation.

Referring to the second line of inquiry, the Wyer Report estimates annual cost of equalizing rules and rates of pay (originally estimated at $550,000) at $706,-248, plus payable taxes of $60,031, or a total of $766,-279, an offset to the anticipated gains. Similarly, there would be an effective interest cost on the non-recurring payments expected to be made to employees adversely affected, although it is not intended that any new securities be issued to provide the funds for such payments.

Attached appendix K-4 shows a breakdown by states of jobs affected by unification on a system basis. It shows a total of 8,286.8 (8,287) jobs abolished, 3,115.3 (3,115) jobs added, with a net change of 5,171.5 (5,172) jobs abolished with a concurrent reduction in compensation of $32,676,759. To reconcile the above data with that shown in appendix K-5, the following data is significant: Of the 8,287 jobs abolished and 3,115 jobs added, 215 would be management employees who would remain in their present locations with resulting figure of 8,072 jobs abolished, and 2,900 jobs added, or a net change of 5,172. Of the 3,115 jobs added, it is assumed that 2,900 employees would be required to transfer because of change of work location. 2,879 of those employees are in groups (ICC classification) other than those of executives, officials and staff assistants. In the group of executives, officials and staff assistants, management will be building an organization in which an effort would be made to locate officers in positions where best fitted. It has been assumed that for purposes of cost calculation that 21 of those employees would be required to move as a result of consolidation; the remaining 215 in that category would remain in their present locations.

The results of the first line of inquiry were obtained after a detailed and lengthy analysis, concerning three distinct divisions, embracing eleven areas of concern, of the employment records of Great Northern and Northern Pacific for the years 1957, 1958, and 1959, as revised by the testimony of record as set forth in the summary in appendix K-5. Figures appearing in brackets are

corrected figures supplemented at the hearing and predicated on updated data as of July 1, 1960.

A discussion of the factors and assumptions entering into the analysis is desirable for clarity. In the first area of concern—"available jobs created by attrition"—employment records of Great Northern and Northern Pacific were analyzed for that three year period to determine the number of employees (those with 90 days or more) who left the service because of deaths, retirements (only 40 percent counted), dismissals, and resignations, all considered as creating jobs, except certain station employees at Seattle, and all extra gang laborers. The jobs thus created were related to the average number of employees on both railroads for the stated three years. The average rates of attrition developed were applied to total employment of the former principal railroads involved (excluding extra gang employees) to determine estimated available jobs created by attrition annually for the first five years following consolidation. Analysis was made of each general group of employees, classified by ICC group (six groups), and rates of attrition were developed for each group. The average rate of attrition 6.1 percent which applied to total employment for the four railroads, 1959 (64,119, excluding extra gang employees) provided the number of jobs potentially created by attrition, 3,904.

In the second area of concern—"number of jobs created by attrition"—available jobs created by attrition were considered as usable to absorb employees whose jobs would be eliminated, and to terminate consolidation and displacement allowances and it would be necessary to match jobs created by attrition against jobs eliminated, considering both qualification and location. It was assumed that specific percentages would apply to measure how many available jobs created by attrition could be used, how many would be filled locally and how many would require transfer.

In the third area of concern—"employees whose jobs are eliminated during the year and employees transferred", it was recognized that under consolidation certain jobs would be abolished and certain other jobs

added. They were translated into numbers of employees (except yard locomotive engineers) such as a 5-day job as 1 employee; 6-day job as 1.2 employees; and 7-day job as 1.4 employees. That data was necessary as it included relief or extra men who handle jobs in addition to the regular employee on a 5-day week. Use of the terms "jobs abolished" or "jobs added" was made in connection with estimate of savings from consolidation, and "employees whose jobs were eliminated" or "employees added" were used where the effect upon individual employees was under consideration. Employees whose jobs were eliminated, and employees added, with consolidation, were matched against each other, comparable by qualification, so far as practicable, to determine the net number of employees affected by consolidation. The employees whose jobs were eliminated, and employees added, were first matched within each study, within each location; the remaining unmatched employees, constituting those analyzed in the study XIX, were then matched within each location and between studies. All such matchings considered as transfers, and all employees not taken care of through matching, were considered as deprived of employment as a result of consolidation. It was assumed that all employees offered work at another location for which qualified would accept. The number of employees deprived of employment, and the number of employees transferred, were allocated to the five years following consolidation in proportion to savings realized in the first five years exclusive of studies VII, VIII, IX, XII, XVII, XIX, and XX, with resulting percentages applicable to those years consecutively as follows—first, 16 percent; second, 34 percent; third, 28 percent; fourth, 21 percent, and fifth, 1 percent.

In the fourth area of concern—"excess usable jobs created by attrition"—excess usable jobs were treated as applied first to employees deprived of employment in prior years, matched according to group, the remainder applied to employees receiving displacement allowances.

In the fifth area of concern—"employees deprived of employment, and given consolidation allowances for more

than one year"—the period of protection of employee depends in part upon the length of service of the individual employee deprived of employment. For purposes of study, the average length of service of employees were assumed by ICC classification group, and varied from three to fifteen years. Under assumptions used, all employees deprived of employment would be re-employed in jobs created by attrition before their period of protection expired. While such may not be the fact in actual practice, as some employees deprived of employment would have less than the average length of service used for the purpose of this study, their period of protection might expire before a usable job created by attrition materializes. The principles involved are illustrated in appendix K-5 and estimated costs are considered greater than if more limited periods of protection would be experienced in certain instances.

In the sixth area of concern—"employees deprived of employment and given consolidation allowances for less than one year"—it was assumed, in re-employing employees whose jobs are eliminated in jobs created by attrition, that the job created would be available for the employee whose job was eliminated at the time it would be needed by the latter, with the result that there would be on time lag or loss in wages. The analysis recognizes the probability that there would be some failure to match jobs immediately and employees temporarily deprived of employment would be entitled to consolidation allowances for the period of their unemployment. Moreover, if usable jobs estimated to be created by attrition are double or more than the jobs estimated to be eliminated during the year, it was assumed that jobs could be matched without any time lag or loss of wages. If the ratio of jobs created by employees whose jobs were eliminated was less than 2 to 1 the percentage of employees involved and the time lag for re-employment were assumed according to a carefully devised formula.

In the seventh area of concern—"employees transferred"—the number of employees whose jobs are transferred to other locations within the plan of consolidation were determined on an actual basis so far as possible.

When employees whose jobs are eliminated exceeded the number of usable jobs created by attrition that could be filled locally, the remaining employees would be offered jobs created by attrition at other locations and such employees were classified as "employees transferred."

In the eighth area of concern—"employees in worse position"—those were so considered whose jobs would be eliminated as a result of consolidation, and who accept other jobs for which they are qualified, but at a lower rate of pay, and would be entitled to a displacement allowance. It was assumed that 50 percent (a judgment figure) of the employees whose jobs are eliminated would be entitled to displacement allowance, and that excess usable jobs created by attrition and not required for employees deprived of employment would be available to reduce the number of employees receiving displacement allowance and that 50 percent (also a judgment figure) of the excess jobs within each group could be used for that purpose. The number receiving displacement allowances was reduced to the extent excess usable jobs are available and can be used. For the system as a whole, more usable jobs were available in the first year than were used, but because of inability to match qualifications within groups of employees it was estimated that 7 would be in worse position because of consolidation in the first year following consolidation. The figure is carried over to the following year and similar calculations made for subsequent years. While the data shows 2,333 employees affected, it includes substantial duplication because the same employee is often being included in two or more years, however, the actual number of individuals affected is 809.

In the ninth area of concern—"consolidation allowances"—all such allowances were based on average annual compensation of employees, by ICC groups, at rates of compensation effective July 1, 1960. It was assumed for the purpose of this study that all employees deprived of employment would be offered re-employment through jobs created by attrition, before their periods of protection expire. Under the Act, consolidation allowances are based on 100 percent of the employee's average annual

compensation, and under the Washington Agreement, upon 60 percent of the employees average annual compensation. Under assumptions used herein and based on averages for groups the allowances under the Act are considered more favorable than under the Agreement, and the larger allowances are reflected in the recapitulation of costs shown in section III of appendix K-5.

In the tenth area of concern—"employees transferred"—dealing with moving costs and loss on homes—such costs were allowed at $350 for all employees transferred which included estimated moving expenses and loss of two days' pay. For those transferred through consolidation, it was assumed that 50 percent of those transferred would incur loss on their home averaging $1,250, with the result that average loss per employee transferred through consolidation would be $625. For those transferred through attrition, it was assumed that 25 percent of those transferred would incur loss on their home, averaging $2,000, with the result that average loss per employee transferred through attrition would be $500. The various assumptions used differ because employees transferred through consolidation would involve older employees, whereas employees transferred through attrition would involve junior employees. Other considerations involve transfer of ownership of homes from larger to smaller communities and stability of the real estate market.

In the eleventh area of concern—"employees in worse position—displacement allowances"—it was assumed that the displacement allowance for employees placed in positions paying less than they previously earned would be $1 per day or $250 per year, strictly a judgment figure.

20. *Study XX* dealt with state taxes on railroad applicants' operating property and federal income taxes on the Burlington dividends. The state taxes on operating property of the four principal railroad applicants totaled $32,320,447 in 1955, and as updated to July 1, 1960, $55,010,550. The corresponding taxes for the consolidated company would undoubtedly be greater, principally because of increased earnings anticipated as a result of consolidation. To estimate the effect of con-

solidation on property taxes, three assumptions were required: (1) methods prevailing in each state for 1955 would be used for consolidated system, (2) estimated savings under consolidation subject to federal income taxes at full rate of 52 percent, and (3) balance of estimated savings from consolidation after federal income taxes reflected in both net railway operating income and net income.

To estimate the value of the consolidated system for tax purposes, as compared with the companies separately, for a basis for estimating state assessments, tax values were considered based on three factors: (1) stock and bond market values, (2) net railway operating income capitalized, and (3) cost of reproduction less depreciation, based on ICC methods and records. The factors were adjusted to reflect changes from consolidation and estimated system values were calculated, which were allocated to the states using methods adopted by the various states. If equalization factors were used in 1955, the same factors were applied to new values to determine probable assessments, and state taxes at various levels of earning were then estimated by applying the tax rates in effect in 1955. Again, because of methods used in allocation of values to states, the mere fact of consolidation without any increase in earnings would increase the total of state taxes for $32,320,447 to $32,830,000.

In updating the data as of July 1, 1960, it was considered that the increase in state property taxes because of consolidation, as a result of changes which would have occurred in the results of the various studies (I-XIX, inclusive) would be 10.2 percent of the net increase in earnings from those studies plus the estimated savings in federal income taxes on Burlington dividends, i.e., 10.2 percent of $55,010,550, or $5,611,076.

The estimated increase in federal income taxes on the Burlington dividends presently received by Great Northern and Northern Pacific is computed on 1959 dividends or $12,452,664. Federal income tax which should have been paid (52 percent) on $6,475,396, less dividend credit received at 85 percent of regular tax $5,504,086.

would result in an amount of federal income tax actually paid on Burlington dividend which would be saved through consolidation $971,310.

Recapitulation. A recapitulation of the twenty studies as revised produces some results at variance with those recommended by applicants' consultants as realizable. There follows a summary of such recapitulation reflecting what in the opinion of the hearing examiner may be conservatively considered as realizable and pertinent to these proceedings

	Study	Estimated Savings	Net Cash Realized (Cash Required)
I	Common Points	$15,846,802	($26,206,751)[27]
II	Duplicate Lines	—	—
III	Lines Retained-Effect of Consolidation on Expenses	1,940,899	(2,434,078)
IV	Duplicated Freight Train Service	1,697,725	—
V	Duplicate Passenger Train Service St. Paul-Chicago	490,856	—
VI	Car Load Freight Shortest or Most Economical Point Routes	3,630,910	—
VII	Car Load Freight-Longer Hauls	10,561,178	—
VIII	Less Car Load Freight-Loading Patterns	432,836	—
IX	Equipment pools	3,208,130	7,106,176
X	General Repair Facilites	2,194,535	1,043,187
XI	Materials & Supplies Stocks and Purchases & Stores Organization	1,336,319	4,667,173

[27] Denotes cash required.

	Study	Estimated Savings	Net Cash Realized (Cash Required)
XII	Foreign Line Freight Charges on Company Material	167,321	—
XIII	Communication Facilities	560,114	(423,720)
XIV	Train Dispatchers	330,809	—
XV	Special Agents	124,463	—
XVI	Dining Car Departments	80,136	94,492
XVII	System Revenues	(1,958,705	—
XVIII	System Expenses	10,586,135	—
XIX	Labor Contracts	(885,360)	(2,768,808)
XX	Taxes	(4,639,766)	—
	Total Savings	$45,605,337	
Less:	12½% allowance for contingencies	5,700,667	
	Estimated Savings Before Income Taxes	$39,904,670	
	Total Net Cash Represented as Realizable from Consolidation—(Cash Required)		($18,922,329)

Summarily, a review of the twenty studies shows savings of $45,605,337, before allowance for contingencies. While the 12½ percent allowance for contingencies is predicated in part on the abandonments recommended in study II which results are discarded for the purpose of determining those areas only within the framework of the proposals for which authority is here sought, there is some relationship to other matters which would have a bearing on the effectuation of the economies in the aggregate. For the purpose of this analysis, the hearing examiner will recognize the 12½ percent allowance figure for contingencies, but in so doing is not to be construed as giving any credence to the abandonments recommended in study II. The savings of $45,605,337, less 12½

percent allowance for contingencies, or $5,700,667, results in a conservative estimate of savings before income taxes of $39,904,670, with a concurrent cash requirement outlay to effectuate such economies of $18,922,329.

Analysis of applicants' financial data, including the pro forma data for New Company, indicates that following unification, the latter would have sufficient available funds to effectuate the economies to the extent herein indicated, and it appears that no requirement for borrowing of funds for those purposes will be necessary.

Appraisal and other reports. Following submission to the joint committee of the Wyer Report in its original form, other reports of appraisers and advisers were submitted. The report of Schultz & Co., dated August 30, 1957, was next received by Great Northern. It dealt with valuation of timber and timber lands, timber on the right of way, and grazing and cultivation lands and covered data used in valuation dated not later than August 30, 1957. That report concluded that the properties covered thereby had a valuation of $49,654,000.

The report of Pishny and Atkinson, dated October 11, 1957, was next received by Great Northern. It dealt with valuation of oil and gas interests and covered data used in valuation dated not later than September 1, 1957. That report concluded that the properties covered thereby had a valuation of $47,244,310.

The report of First Boston Corporation was next received by Great Northern in December, 1957, dealt with a statistical and accounting comparison of Great Northern and Northern Pacific as railroads for a prescribed ten-year period.

The report of Mason, Bruce and Girard, dated March 3, 1958, was next received by Northern Pacific. It dealt with valuation of timber interests and covered data used in valuation dated not later than January 1, 1958. That report concluded that the properties covered thereby had a wholesale market valuation of $62,187,919.

The report of DeGolyer and MacNaughton, dated March 29, 1958, was next received by Northern Pacific. It dealt with valuation of oil and gas interests undeveloped and covered data used in valuation dated not

later than January 1, 1958. That report concluded that the properties covered thereby had a valuation of $33,000,000.

The next two reports both by DeGolyer and MacNaughton and dated April 23, 1958, were next received by Northern Pacific. One report dealt with valuation of oil and gas interests proven and covered data used in valuation dated not later than January 1, 1958. That report concluded that the properties covered thereby had a valuation of $25,801,538. The other report dealt with valuation of Buttee Pipe Lines Company properties and covered data used in valuation dated not later than January 1, 1958, but no valuation conclusion was reached.

The report of Northern Pacific's staff dated May, 1958, was next received by Northern Pacific. That report dealt with land grant lands, coal and iron ore properties, industrial lands and buildings, and miscellaneous properties and covered data used in valuation dated March, 1958. That reported concluded that the properties covered thereby had a valuation of $81,405,000.

The next report involved that of Pishny and Atkinson, dated January 12, 1959, to Great Northern. That report covering data used in valuation dated not later January 1, 1958, was an updating of prior material dealing with valuation of oil and gas interests, proven, nonproductive, and pipeline, and it concluded that the properties covered thereby had a valuation of $48,695,000.

The next report involved that of Schultz & Co., dated January 14, 1959, to Great Northern. That report covering data used in valuation dated not later than January 1, 1958, involved an explanation of different results from that shown in the report of Mason, Bruce and Girard, but concluded that the properties, i.e., timber and lands, had a valuation of $49,654,000.

The next two reports were those of Morgan Stanley & Co., the first dated March 6, 1959, dealing with railroad operations, covering material dated not later than December 31, 1958, the second dated May 8, 1959, dealing with nonrailroad properties, including industrial

properties, covering material dated not later than May 8, 1959, and dealt with the merger terms under negotiation, stock exchange ratio, etc. As to the nonrailroad properties, including industrial properties, it arrived at a judgment figure of $115 million to $125 million as the value of the properties to the consolidated company. Treating the industrial properties of Northern Pacific as not part of the railroad properties it arrived at a judgment figure of $32.7 million as the value of those properties.

Each of the above reports are subsequently discussed herein in more detail in connection with stock exchange consideration.

Prospective diversion of traffic. The Wyer Report as amended did not include in its estimate of gains and losses an estimate of the effect of consolidation on other railroads. With reference particularly to studies VII and XVII there was subsequently developed by these consultants from the basic data dealing with operating revenues and probable net traffic losses and gains of freight revenue as disclosed by certain published basic data for 1960 of the carriers involved, including their annual reports to this Commission, stockholders' reports, and, the waybill analysis underlying their studies culminating in the Wyer Report, a determination of such an estimate, in which applicants concur. The results of that estimate are shown in the appendix L-1 hereto.

In only two instances in any extensive controversy raised with respect to the estimates contained therein and in those instances by interveners Milwaukee and C&NW. Those carriers do not agree with applicants' estimates, have made their own, with substantially different results, and, as a consequence, seek imposition of specific conditions to approval of the unification which are discussed in connection with their evidence elsewhere herein. While in some other respects, differences are raised with respect to estimates made concerning other rail carriers, the carriers involved have entered into stipulations with applicants with respect to conditions they desire imposed should the transactions be approved, which are designed to protect those intervening carriers

against losses of traffic by modification of traffic and operation relationships which, in their judgment, enable the continuance of such relationships on a mutually satisfactory basis following unification, if approved. Those stipulations and evidence in support thereof are discussed elsewhere herein dealing with the interests of those carriers.

Prospective benefits.

General. Applicants advance the proposals in the aggregate on the basis that the consolidated lines under New Company would be enable to improve transportation service to the public, and at the same time benefit from substantial economies in operating costs and related efficiencies. The proposal in the aggregate contemplates that the consolidation of properties under single ownership and management would provide more utilization of operating equipment and permit elimination of duplicate facilities presently maintained by applicant railroads at numerous common points and in common areas. By the same token, it is anticipated that the consolidated company would be better able to control costs, institute efficiencies, and improve the railroads' ability to meet the competition afforded by highway, waterway and airway transportation services.

Applicants maintain the close corporate, managerial, territorial, and traffic relationships of Great Northern, Northern Pacific, Burlington, SP&S and Pacific Coast make unification a natural and logical development; that unification would permit desirable corporate simplification, and that under single managerial control and operation, the unified properties could produce a better transportation service more efficiently and economically, and that such service would also be better coordinated and more expeditious. Moreover, applicants stress that the single organization would be able to meet more effectively the increasing competition from other modes of transportation, especially those by highway, airway, and waterway, which is becoming more intensified because of increased government aid to such forms of transportation; and that achievements resulting from unification

would give assurance of a stronger and more stable railroad system.

Applicants emphasize the public need for the proposed unification in order to maintain their properties physically and financially strong (1) to provide economical and efficient transportation of the basic raw and semi-manufactured products of the fields, forests and mines of the West to competitive manufacturing and consuming mass markets of the populous Midwest and East and to the larger centers of population along the Pacific seaboard, particularly those in California, and (2) to hold and attract to the merged lines the relatively higher-rated traffic moving from midwestern and eastern manufacturing centers into these producing areas and to the larger population centers along the Pacific coast.

While the primary objective of the proposed unification is to produce a transportation service more attractive to the public and more economical for the railroads, applicants anticipate that better transportation at substantially lower expense would result; that resulting improved service would be of direct benefit to shippers and consignees who use and rely on the services of railroad applicants; and that substantial economies which would generate new capital for improvements are a necessary concomitant to provide that service and would likewise enable applicants to maintain rates on movements of the products of the Northwest at the reduced levels which make possible the sale of those products in distant markets.

The advantages expected to be obtained from unification fall into two broad categories, namely, (1) those which directly benefit the applicant lines internally, only indirectly affecting service to the public through reduced operating expenses, and (2) those which directly benefit the shipping and receiving public using applicant lines and indirectly benefit the applicant lines through increased traffic.

In the first category are the savings to be made by reducing expenses through elimination of duplicate lines, consolidation of terminals, consolidation of purchases and stocks of materials and supplies, reduction in dupli-

cate supervisory and traffic solicitation forces, reduced per diem and mileage expenses through reduced car days and faster terminal handling, corporate simplification, reduction in fixed charges and elimination of income taxes on intercompany dividend. Those internal improvements would permit New Company to conduct its railroad operations with eight percent fewer employees and achieve operating savings conservatively estimated at approximately $36 million after contingencies, but without any change in traffic volume. Such internal savings and other benefits indirectly accrue to the shipping and receiving public using applicants' lines by providing them a financially stronger railroad system, better able to provide capital improvements and to absorb fluctuations in traffic volume due to temporary economic and climatic conditions and other factors affecting traffic volume beyond the control of applicants. Those are legitimate aims of any unification and do not in and of themselves affect the traffic of other transportation companies competing with applicants or the shippers or receivers who cannot or do not choose to use the service of applicant railroads.

The second category includes those advantages accruing from unification of the five railroads into a system which would permit it to offer benefits to shippers and receivers using their lines which could not and would not be available except by unification of the properties. The advantages include faster, more dependable, single-line service, greatly improved car supply, wider routing with more liberal transit and reconsignment and diversion privileges, more capital for improvement and modernization, increased capacity which will better serve the national defense, and lower cost transportation with its improved ability to maintain competitive rates. Such advantages naturally benefit principally shippers, and, to the extent not used or made available to other shippers and receivers similarly situated may have some effect on their competitive position market wise. If those benefits cannot be offered by other lines, diversion of competitive traffic to the unified system in certain instances may result. If offered by competing lines at

increased expense, it may be to the detriment of necessary services to other shippers, receivers, towns and communities who are dependent entirely on such railroads. Consequently, public benefits which can only be achieved through unification and elimination of competition between applicant lines must be viewed not only in the light of benefits to the unified company and its patrons, but also in the light of their effect upon service to the entire territory affected by unification.

The more important factors which influence the movement of traffic over one or another competing line include, although not necessarily in order of importance (1) location of the shipper's plant or factory and the location of the consignee's warehouse or place of business, whether on one railroad or on another; (2) consistency of service, (3) speed of service, (4) claim factors, (5) car supply, particularly in connection with specified types of equipment, (6) number of routes available for re-consignment and diversion privileges, (7) combination of transit points, (8) combination for stop cars, (9) purchases by railroads, (10) the personal equation, and (11) last, but not least, rates. Applicants expect consolidation would improve their competitive position with respect to each of the above traffic producing factors, but of greatest importance would be the resulting improved car supply, particularly with respect to special equipment, wider routing with the accompanying broadening of market areas for shippers on applicants' lines, and faster freight service.

In support of their contentions of the benefits which are expected to result from unification, applicant presented additional substantial and convincing evidence, both of a technical nature and in the form of public and shipper and shipper association support. Its evidence shows that unification will promote the public interest in that the unified company will be enabled to provide more convenient, efficient and improved transportation service than can otherwise be provided by the separate railroad applicants. Each of the major benefits will be discussed.

Proposed faster freight service and improved schedules. It is anticipated that one of the prime benefits of consolidation will be that shippers and consignees will receive substantially faster service, and receive more dependable, on time, delivery of their commodities. Shorter transportation time by concentrating the transcontinental traffic of Northern Pacific and Great Northern over shorter or more favorable operating routes from the Pacific Northwest to connections with Burlington at Laurel, Sioux City and Twin Cities, will bring the great Northwest area closer to the more heavily populated areas of the country where the markets are located. Moreover, the proposed improvements will enable New Company to be more competitive particularly with public and private motor carrier transportation, will aid in stemming loss of traffic from the rails, and will reduce the waste involved in damage and delay in shipments.

The evidence describes improvements anticipated in freight schedules both in terms of proposed time schedules and in terms of more dependable service, on expedited schedules. The changes which, under unification, would make it possible for the shipping public to obtain the proposed faster and more dependable service include, among others, consolidation of terminal facilities at common points, the more important improvements for the handling of through traffic being at St. Paul-Minneapolis, Head-of-the-Lakes, Spokane, Seattle and Portland-Vaucouver, elimination of the interchange delays at the Twin Cities, Laurel, and Sioux City, the use of the proposed new classification yards at Minneapolis, Spokane and Seattle, the grouping at Galesburg and Cicero, Ill., of cars to enable some blocked trains to move directly to Northtown (Minneapolis) or Minot, and the use of the shortest or most efficient internal routes available to the unified company. The proposed improvements cannot be accomplished so long as Great Northern and Northern Pacific remain competitors, and can only be justified by the concentration of the traffic volume of both these railroads at the named important common points.

Under unification, New Company would establish through transcontinental freight routes which would take

the best advantage of the shortest available lines, the most favorable grades, and the most economical operation over the consolidated system and which would permit the establishment of many benefits to shippers and consignees not readily available under separate operation of the separate applicant railroads. These new and improved terminal facilities, just mentioned, together with existing modern electronic hump yards on the preferred route of Great Northern and Minot and at Pasco on the Northern Pacific-SP&S preferred route to the Portland-Vaucouver area, will eliminate delays in handling trains through those terminals as well as at other intermediate points. Sufficient tonnage is assured applicants to operate full trains from Portland to Twin Cities which will be completely classified at Pasco and move intact. Moreover, the many operating problems, discussed of record, which make it difficult without consolidation to obtain the goal of meeting the present schedules, would be eliminated. For example, with the ability to route shipments over the most direct and expeditious routes the unified company would be able to accomplish movement of shipments of livestock in certain important areas without the delay that now necessitates a stop to feed enroute. The improvements in freight schedules both in concrete terms of the proposed time schedules and in terms of the basic reasons unification would make possible more dependable service on expedited schedules is well demonstrated by the record.

No changes are proposed with respect of passenger train service and passenger train schedules, except as would be affected by combining the passenger train operations of the applicant railroads between St. Paul and Chicago, previously described, and in inauguration of bus service to serve two local points on the 75-mile Great Northern segment between Sandpoint and Spokane, re-routing of passenger trains to the Northern Pacific segment between those two points to enable use of the consolidated passenger stations at Spokane. No authority is sought for such substituted motorbus service and thus, no action may be taken herein on such planned substitution of service.

Based on operating changes proposed in the Wyer Report, applicants submitted in evidence, inter alia, an exhibit (No. 11) entitled "Freight Schedules, Both Present and Proposed Under Consolidation Between Representative Points." It describes the schedules for the principal time freight trains on the unified system. Significant examples portray the scope of the proposed improvement in schedules. In discussing such schedules it appears advisable to consider them in relation to present schedules of the two Northern Lines.

Overall the heaviest flow of the transcontinental traffice is eastbound. The record shows that the most expedited service offered by applicants from Seattle to Chicago is on Great Northern Fruit Train that leaves Seattle at 11:59 p.m. Under that schedule it reaches Minneapolis at 8:00 a.m. four days later, where it connects with Burlington Train No. 88 for Chicago arrival at 12:15 a.m. the fifth day. The elapsed time from Seattle is 94 hours and 15 minutes if the schedule is met. Under the proposed schedule, (Fruit Train No. 82) would leave Seattle at the same time, would make intermediate stops at Wenatchee, Spokane, etc., but would arrive Minneapolis at 9:45 p.m. on the third day after departure and at Chicago at 12:30 p.m. the next day, with a total elapsed time of 82 hours and 30 minutes or 11 hours and 45 minutes faster than present schedule.

The next fastest transcontinental eastbound train is presently on Northern Pacific, Train No. 600, which leaves Seattle at 9:00 p.m. and arrives Chicago (after interchange with Burlington Train No. 88 at Minneapolis-St. Paul) at 12:15 p.m. on the fifth day, a total elapsed time of 97 hours and 15 minutes. After unification, the departure time (Train No. 98) would be 8:30 p.m. and arrival time at Chicago will be 10:30 a.m. on the morning of the fourth day, a total elapsed time of 84 hours, or 13 hours less than present schedule.

Savings in time would be provided for shippers on eastbound schedules between other stations. Seattle will be brought closer to East St. Louis by 20 hours, 30 minutes on the fastest schedules. The fruit and agricultural center at Yakima would be closer to Chicago by

about 12 hours and to Kansas City by 24 hours. Shippers of fruit produced at Wenatchee will be able to reach Chicago more than 9 hours earlier.

On shipments to Chicago industries, arrival delays of only a relatively short period result in a 24 hour delay in actual delivery, for many local ordinances prohibit and other local practices forbid switching and spotting of cars after an early morning deadline. The faster schedules would improve the situation by about 24 hours in the deliveries under those circumstances.

All present Great Northern traffic from Spokane and western points which moves through the Laurel gateway by interchange with Burlington would be advanced 24 hours in moving via the Northern Pacific short line instead of over the present on route of Great Northern.

Westbound schedules would also be expedited. The fastest time to Seattle from Chicago will be reduced by about six hours, and from East St. Louis by ten hours. The elapsed time to Portland would be reduced by about six hours on the fastest schedules and ten hours on the next fastest schedules. From Kansas City and Omaha to Seattle there would be a reduction of seven hours. Proportionate savings in time would be realized at the major intermediate points served by those trains.

Where no interchange among applicants is involved, or re-routing to shortest routes, such as on traffic between Twin Cities and Duluth or Superior and on the northbound and southbound Pacific coast movement, the schedules would generally be continued as at present.

The rerouting under consolidation of through fast transcontinental freight trains to the shortest route would remove those trains from the Northern Pacific line between Casselton and Sandpoint and utilize the segment of the Great Northern line between those points 97 miles shorter. However, shippers and receivers at intermediate stations on that alternate main line segment generally would receive an improved and more expeditious service under consolidation than at present.

Present time freight schedules designed to meet requirements of through freight service for transcontinental trains between Twin Cities and west coast points,

offer limited advantage to shippers and receivers at intermediate stations located on what would be alternate main lines following consolidation, as those trains are usually full tonnage trains which often prohibits the picking up of additional traffic enroute because of the necessity of on-time performance. On the alternate main line, however, following unification, the schedule for time freight trains can be tailored to better meet the needs of the shippers and receivers at intermediate points and local trains adjusted to conform. Thus, the time freight trains would escape road interference that presently occurs when through time freight trains are preferred, resulting in less congestion and less delay at terminals.

On westbound traffic, Northern Pacific Train No. 603 is its fastest through freight between Minneapolis and west coast points. Shipments destined for stations on the Nothern Pacific line between Casselton and Billings, such as Jamestown, Mandan (which also serves Bismarck) and Dickinson, N. Dak., and Glendive and Forsyth, Mont., are presently served by Northern Pacific Train No. 605. Jamestown and Mandan also are served, on westbound traffic to those points by a train which originates at Dilworth, Minn., as a connection with Northern Pacific Train No. 631 out of Minneapolis. After consolidation, a newly-scheduled Train No. 603 from Minneapolis will be routed over the alternate main line and because it would not be handling through traffic for the Pacific Coast points, would serve the intermediate points on the alternate main line in North Dakota and Montana. In addition, a new Train No. 437, operating from Minneapolis to Dilworth on the same schedule as present Northern Pacific Train No. 631, is proposed and a connecting train from Dilworth would continue on the same schedule to Jamestown and Mandan as the present train which now connects with Northern Pacific Train No. 631.

The service proposed by new Train No. 603 would be faster than that of present Northern Pacific Train No. 605 to those intermediate stations, with reductions of transit time as follows: From Minneapolis to James-

town 4 hours, 55 minutes; to Mandan 11 hours; to Dickinson 16 hours; to Glendive 19 hours, 45 minutes, and to Forsyth 23 hours. The reduction in scheduled time to the named communities is more reasonable when consideration is given shipments from origins such as Chicago or points east thereof. The present Northern Pacific Train No. 605 delivers to the named stations cars from connecting Burlington Trains 97 and 83, which leave Chicago at 11:00 a.m. and 6:40 p.m., respectively, each day. The new Train No. 603 would handle cars from the new Train 83, which would leave Chicago at 7:00 p.m. Shipments from Chicago to Forsyth, which now require an elapsed time of 71 hours, 45 minutes, or 64 hours, 5 minutes, would be handled after unification in 35 hours, 15 minutes.

Westbound traffic for Billings (a larger point than those just previously named) the next terminal to the west on the Northern Pacific in Montana, is presently handled on Northern Pacific Train No. 603, the fastest Northern Pacific transcontinental train, but that train cannot set out of Billings and maintain its schedule on through traffic, thus Billings cars are handled through Laurel (a point 15 miles west of Billings) and are back-hauled to Billings later. Billings cars, which now leave Minneapolis at 10:30 a.m. daily arrive at Laurel at 9:50 a.m. next day and are back hauled to Billings with late afternoon arrival. After unification, Billings cars would leave Minneapolis at 9:00 a.m. and arrive directly at Billings by 8:00 a.m. the following morning.

Westbound traffic for Helena and Missoula (stations on the Northern Pacific line west of Billings) presently handled on Northern Pacific Train No. 603 is cut out at Laurel and moves on following trains to destination. After unification, new Train No. 603 departing Minneapolis at 9 a.m. would handle those shipments direct to Helena arriving at 8:15 p.m. next day and at Missoula at 2:00 third day, permitting delivery to consignees at Helena either next afternoon or third morning and delivery at Missoula by third morning in contrast to present delivery at Helena late on third day or by fourth morning, and at Missoula no earlier than

fourth morning. Traffic for Butte, Mont., west of Laurel, would be handled as at present on Train No. 603 to Livingston, thence connections to Butte.

Westbound traffic to Washington and Oregon destinations from the intermediate points named would move in new Train No. 603 with connections out of Spokane with several hours earlier arrival at Pasco and Portland than presently feasible. Pasco connections would provide service on same morning to Yakima and overnight trains between Yakima and Seattle would provide service between those points generally better than at present.

On eastbound service, elapsed time for shipments from Laurel to Chicago under proposed schedules would be cut by 3 hours, 15 minutes. Northern Pacific Train No. 604 presently originates at Laurel and terminates at Minneapolis. Following unification new Train No. 604 would have the same schedule but with less interference by other trains and less terminal delay it would be enabled to pick up shipments at Billings and set out and pick up shipments at Glendive, Dickinson, Mandan, Jamestown, and Fargo-Dilworth, speeding up service for most of the stations as much as 24 hours, whereas presently it sets out at Mandan only.

Eastbound traffic for Jamestown is presently handled on Northern Pacific Train No. 604 to Mandan, where it is cut out and put on a slower Northern Pacific Train No. 700 to go on to Jamestown, even though Northern Pacific Train No. 604 continues through Jamestown and makes a short stop there to change crews. Similarly, a local or secondary train makes the stops at intermediate points from Laurel to Mandan to set out shipments. After unification, traffic for Jamestown and other intermediate points would be handled on Train No. 604 through to and set out at those destinations.

On eastbound traffic from Billings, new Train No. 604, which leaves Laurel for Minneapolis at 9:00 a.m. would pick up cars at Billings, then cars from Billings destined to points served by Train No. 604 would not have to be sent west from Billings to be placed in the train at Laurel, and since new Train No. 604 would set out cars at more places than at present, Billings traffic to

those points would no longer have to wait for the secondary train. Traffic for Minneapolis leaving Billings later, would arrive at Minneapolis on new Train No. 604 at same time as at present with resulting reduction in elapsed time. Traffic for Chicago because of improvements at Twin Cities would arrive more than 3 hours earlier than at present.

On eastbound traffic from Missoula, shipments are presently picked up at 1:00 a.m. by the Northern Pacific Fruit Train which arrives at Minneapolis at 4:00 a.m. of the second day; the other train (Northern Pacific Train No. 600) is the through fast eastbound counterpart of westbound Northern Pacific Train No. 603, which does not provide regular pick-up service to Missoula.

After unification, the proposed schedule provides that the new Train No. 600 would leave Missoula at 1:10 a.m., and the Missoula shipments, after transfer to new Train No. 604 at Laurel, would continue to arrive at Minneapolis in time for early morning spotting on the second day, although elapsed time would be 1 hour, 50 minutes longer. It is anticipated that faster yard work performed at proposed new Northtown yard would permit of expeditious delivery to consignees. Missoula shipments to intermediate points, now transferred at Laurel from Northern Pacific Fruit Trains to a secondary train, or to Northern Pacific Train No. 604, would be transferred to the new Train No. 604, resulting in faster delivery for the shipments to all points whereas Northern Pacific Train No. 604 does not regularly set out cars. Shipments from Missoula to Chicago under proposed schedule would arrive at Chicago at 9:00 p.m. rather than at 12:15 a.m. the next morning as at present, enabling greater dependability of making timely connections at Chicago to points east thereof. Also, on eastbound shipments from Missoula and Helena, a new Train No. 40 to Laurel and Kansas City, not scheduled to connect with Train No. 604, would serve points intermediate to Kansas City, with elapsed time from Missoula approximately 21 hours faster than present service via Northern Pacific Fruit Train to Laurel and thence Burlington to Kansas City.

Although savings in elapsed time between major terminals of as much as 24 hours is of benefit to many shippers and receivers, the improvement in reliability is perhaps of even greater importance to many. A few hours earlier arrival of time freights at any station under proposed schedules provides additional leeway and greater flexibility to assure actual delivery to the industry at the desired time. In addition, the consolidation of terminal facilities will eliminate interchanges and transfer movements from train yards to the industry tracks or train yards of other component lines, which will permit shipments to leave later and arrive earlier. Dependability of service, with on-time arrivals and deliveries, particularly to connecting lines, is important.

As a result of the proposed operating changes, New Company would reduce schedules six hours from Chicago to Seattle via Twin Cities with proportionate time savings at intermediate points. Schedules eastbound from Seattle and other important West Coast points to Burlington's Cicero Yard at Chicago will be 12 hours faster than at present. Arrivals from the West Coast at Kansas City and Omaha moving through Spokane and via Laurel, will be a full 24 hours earlier than at present. Scheduled time to Peoria and St. Louis will be shortened by 18 hours.

Burlington trains now terminate at Dayton's Bluff Yard at St. Paul, and traffic to and from Minneapolis and points west is handled in transfer trains between Dayton's Bluff and the interchange yards of connecting lines extending west of Minneapolis and also for industry delivery in Minneapolis, switching time from and to the Northtown Yard and industries served by Great Northern and Northern Pacific at Minneapolis, when moving east via New Company, will be reduced from two to 24 hours, which would save as much as 40 hours on a shipment between Chicago and Minneapolis.

The principal savings in elapsed time for through transcontinental trains is at Twin Cities where four to eight hours delay will be eliminated. Burlington operates on a fast schedule from Twin Cities to eastern

junctions, but because of delays of from six to 12 hours at Twin Cities and at intermediate junctions such as Savanna, Ill., it misses connections at Peoria and St. Louis, which delays the traffic 24 hours. The new schedules will permit New Company to overcome that deficiency. The proposed schedules to Chicago are to the Burlington's Cicero Yards, but eastbound trains arrive at Congress Park, its largest single interchange at Chicago, at least 40 minutes ahead of scheduled arrival at Cicero, and westbound leave at least 40 minutes after scheduled departure from Cicero Yard. Burlington regularly makes its connection at Congress Park with Indiana Harbor Belt Line, but sometimes misses direct connections at Chicago, or is late for delivery at Chicago industries and produce terminals. The proposed new schedules will permit New Company to arrive at Chicago with sufficient leeway to make cut-off time of connecting lines and early morning delivery at Chicago with dependable regularity.

More advantageous transit and routing privileges. Following unification, New Company would be operated as a fully integrated system, with the result that shippers would have not only the routes presently available under published tariffs, but additional ones involving the lines of the competent railroads in any combination except where unnatural circuitry would result. Those benefits to be derived from opening up the intermediate junctions to form cross-over routes between Northern Pacific and Great Northern west of Twin Cities and new and broader routes between them and Burlington at Billings and Sioux City are stressed. Those routes have been historically closed in order to preserve to the two Northern Lines their respective maximum hauls. Likewise, a number of practical economic advantages would stem from the wider choice of routing, including such privileges as (1) processing, storing, milling, feeding or manufacturing in transit, (2) stopping cars to partly load or unload at innumerable additional points, and (3) increased opportunity for diversion of shipments to meet shippers' requirements. Unification will also permit diversion and reconsignment privileges to a much broader

area of ultimate disposition through use of the routes embracing the other component lines. Other advantages would also accrue from broadening of the territory of the system.

Those advantages and the reasons why consolidation would bring the extension of the desired privileges warrant discussion. Transit privileges permit the shipper to stop a shipment en route, for various purposes as specified in the tariffs, and yet retain the benefits of the rate to destination which applies on a through movement not stopped in transit. Without such privileges, the shipper pays a combination of rates, one applying on the shipment from point of origin to the stop point and the other on the shipment from stop point to destination. Since the rate for the through movement (plus the charge, if any, for service performed in stopping the shipment) is often significantly less than the aggregate of the rates to and from the transit or stop point, those privileges have a real value to shippers.

Generally, traffic on one of the component railroads can be given transit privileges only at points on the same railroad en route to primary markets. The basic reason and justification for that restriction is that the railroad which provides needed service to the primary area thereby protects its long haul and the revenues therefrom. The propriety of a railroad protecting its long haul and the revenues therefrom has long been recognized by the Congress (49 USCA, Sec. 15(4)) and by the Commission and by the courts. Cf. *Chicago, M., St.P.&P.R.Co.* v. *Spokane, P.&S. Ry. Co.*, 300 ICC 453, *Chicago, Milwaukee, St. Paul & Pacific Railroad Company, et al.*, v. *United States, et al.*, 182 F. Supp. 81, affirmed 366 U.S. 745 (1961), herein called the *Spokane Gateway case.*

Another reason is the greater expense which would be involved in joint line operations with multiple interchanges. Upon unification, New Company will be able to publish tariff provisions permitting transit and similar privileges for movements which, without unification, would short haul one of the component railroads and would involve interchange expense that would be eliminated through unification.

The expansion of transit privileges would benefit the producers and processors of numerous commodities as to which the transit privileges for storage, processing, fabrication, or mixing are important elements in determining the ultimate available market areas or the available points of original supply. Those commodities include lumber, lumber products, millwork, plywood, grain, grain products, feeds, fertilizers, fish meals, oils and feed concentrates, steel and steel products, among others. In such cases, the ultimate receivers and consumers also benefit by the expansion of their economic sources of supply. An important concern to many shippers, is that they be enabled to stop a shipment en route, for purposes such as fabricating, processing or storing, and yet retain the lower through rate charge to destination.

Another expanded tariff provision unification would afford concerns the ability of a shipper to stop a through shipment for additional loading or for partial unloading at an intermediate point between origin and destination, at the through carload rate plus a charge for the service of stopping the car.

As indicated, unification will provide a great number of attractive patterns for stops to complete load using cross-over routes for various types of commodity movements. Moreover, the New Company will establish routes through Laurel through Wyoming, Nebraska and even Colorado to the Missouri River and beyond for movement of forest products. That would provide fabricators and processors at points in Nebraska the ability to secure lumber from Great Northern and Northern Pacific origins which they are now unable to do, thereby benefitting transit processors or fabricators in Nebraska desiring to ship east of the Missouri River and originating lumber shippers in the Pacific Northwest by broadening and expanding their markets.

Grain from Montana origins on Great Northern could move to flour and feed mills on the Northern Pacific for milling, storing, blending in transit, both west of Montana and east thereof and grain from Northern Pacific origins could likewise move to Great Northern transit points. Cross-over routes will eliminate out-of-line charges for millers such as the one at Billings. The new

wider routes will not only benefit millers and processors of grain, but will also benefit the producers of grain by providing broader markets for grain produced along the lines of the component railroads. The transportation of frozen fruits and vegetables and canned goods presents an important feature here. That is the ability to mix various types in a single carload shipment using the privilege of stopping to complete load in transit. After unification, the shipper will have a much broader ability to make mixture of that type commodity that can be done under the separate operations of the competent railroads.

Livestock which now moves single-line on the Northern Pacific and Great Northern will be able to be shipped over the less circuitous and faster routes of the unified system reducing transit time, and eliminating extra stops for feed, water and rest, with savings to the livestock industry.

General merchandise moving to jobbing centers in the great interior area between the Missouri River and Twin Cities and the Pacific Northwest is distributed through jobbing centers located approximately 250 to 300 miles from each other. Those jobbing centers receive general merchandise in carload quantities and distribute them in smaller quantities in their trade area by truck or rail. Those jobbing centers utilize the privilege of stopping to partially unload at three intermediate points at the rate to final destination for the carload. That is often accomplished by the railroads by transloading a full carload at a convenient point on a line into separate cars for delivery to stop points, however, because of routing restrictions, the stopoff points must be grouped on a single route of the component railroad. After unification, shippers ultimate receivers and intermediate jobbers can use a much more selective pattern of distribution of merchandise to interior jobbing points.

In addition, unification would afford shippers in the westward transcontinental movement of manufactured and miscellaneous traffic moving in stop-off cars. The greatly enlarged single system with its numerous combinations of stop-off points would permit such shippers to more readily combine shipments in stop cars speeding up

their handling of such shipments at their factories or assembly points.

The record indicates that in the last two decades there has been a change in the former pattern of receipt of full carload shipments of merchandise from eastern points, to be held at jobbing centers in the Northwest for later distribution in small quantities to dealers throughout the trade territory of the jobber. With higher inventory costs and the advent of trucking, the practice of ordering merchandise in smaller quantities has increased. To meet the need, and to attempt to compete with trucking, the railroads have established tariffs which permit a carlad shipment to be stopped for partial unloading at three intermediate points and terminated at a final destination, at the carload rate applying to destination, on a through movement. As indicated, the stop-off points must be on the authorized tariff route of the railroad handling the shipment. Following unification, the shipper will be able to combine stop-off points that are on the present lines of one of the applicant railroads with stop-off points that are on the lines of another of the applicant railroads.

Increased diversion in transit privileges would also benefit those shippers who find it desirable, in their business, to alter the destination after the shipment has started on its way to the first-billed destination. A shipment moving on the line of one railroad can always be diverted to a point on another railroad, but the greater combination rates would thus apply. Consolidation would grant those desiring to use the diversion privilege a much broader area of ultimate disposition through use of routes embracing the other component lines and the single factor rate would thus apply.

The enlarged diversion privileges are of special significance to many shippers. For example, shipments destined for a particular point upon rejection by consignee prior to its reaching that point, could be reconsigned to another point in a broader territory without paying the combination rate, which would be prohibitive. Further, the broader diversion privileges would, upon unification, resolve innumerable difficulties, including situations where

shippers are faced with a requirement to divert or reconsign cars destined to a point on one railroad to a point on another railroad. Since the privilege is associated with and limited to single carrier routings for reason that the carrier wishes to protect its longest haul, diversion of reconsignment to what was formerly an off-line point obviously demonstrates the broader application and benefits which would accrue to the shipper. Such privileges and advantages were cited by numerous witnesses for shippers and shipper associations in connection with their support of the applications.

Increased availability of cars. Applicants recognize that an expedited railroad schedule alone does not serve the shipper if cars are not available or are in short supply when needed, or the cars available are not of the specialized type suited to the shippers' needs, and the evidence of numerous shippers shows likewise that it has been and continues to be a persistently recurring and worrisome problem. Shortage of some types of cars in certain areas and at certain periods have existed for some time, and in recent years shortages have been aggravated through failure of many lines, particularly in the east, to build sufficient new cars and keep their older ones in repair.

It is evident that unification would substantially increase effective car supply to the benefit of the public for several reasons. As a unified system, there will be more at-home junctions, shorter routes and improved car handling through terminals and in the dispatching of cars of the component lines to meet the requirements of shippers, particularly with respect to specialized equipment. Merely by merging, New Company will better its proportion of its total ownership on-line above the average for the railroads in the United States. By faster turn-around time over shorter routes and handling through terminals, New Company anticipates that it will save 639,097 car days, making an average of 1,750 cars available on the new system daily.

The savings portrayed by the Wyer Report do not include all of the savings that will result from the pooling

of freight cars by the merged company. In that connection, Study IX-F represents all instances where a dollar value could be assigned to the pooling of freight cars, but there are some far-reaching effects which arise from unifying the car fleet of the component lines on which no dollar value can be placed. However, there would be a very real value over and above car hire savings because New Company will be enabled to handle an increased volume of traffic over its lines. Thus, when two or more of applicants serve the same point and obtain traffic from the same shipper, each tries to hold sufficient cars to protect the loading requirements. New Company would do the same thing, but the total number of cars held to neutralize each other would be reduced in proportion to the number of component companies serving the common point. It is estimated that savings of 61,555 car-days can be made at 14 of 36 points served by applicant railroads.

Thus, reductions in scheduled transportation time and greater percentage of on time deliveries would automatically increase the available car supply, in that the cars would be made empty and released for new loads more quickly than at present. The use of shorter routes, elimination of interchanges, improved yard facilities and improvements in the handling of less-than-carload traffic to get heavier loads per car will aid substantially in creating a better car supply. The centralized responsibility for the acquisition, distribution, supervision and control of all freight equipment in a single transportation department, as proposed, would permit the ordering of cars from place to place on the consolidated system to meet anticipated requirements with full assurance of prompt availability to the areas of highest current loading needs, whereas at present each line must look to its own interests and appeals to each other are ineffective compared to the degree of control which would be exercised under the consolidated system. That situation is best evidenced by the fact that the requirements for box cars reach their

peak [28] at different times on each of applicants lines, but so close together that one line is reluctant to release its surplus cars to another line which is experiencing peak demand for fear of not being able to obtain return of the cars in time to meet its own demands, with the result that cars remain idle on one railroad at times when they are in short supply on another.

Similarly, the present situation of back hauls of empty cars on the line of one applicant while another applicant is moving empties in the reverse direction would be eliminated, and empties would be routed to the point of nearest demand. The change would permit the reduction of empty car miles and make empty cars more readily available to meet shippers' requirements, and produce other incalculable economies through elimination of duplicate energies which are unproductive.

Following consolidation, it is anticipated that changes in the application and effect of the Association of American Railroads car service rules dealing with the responsibilities of the railroads for the handling and return of foreign line cars would be made and result in making more cars available to shippers. One reason for this concerns the relationship among the applicants themselves—as individual railroads, their obligations to each other are the same as to other railroads. For example, a Great Northern car from Spokane to Kansas City is a foreign car to Burlington at Kansas City, and, under the car service rules, is returned empty to the Great Northern if there is no local demand for loads in the direction of that return. At the same time, demands of Kansas City shippers for cars to load for the east or south must be

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[28] A five year study shows the following peak loading:

Burlington	—	Mid-July
Great Northern	—	August 14-September 3
Northern Pacific	—	August 18-October 1
SP&S	—	August 1-September 24

And an additional exhibit introduced by intervener Washington shows peak loading during 1960:

Burlington	—	June 25-August 20
Great Northern	—	July 23-September 17
Northern Pacific	—	July 23-September 17

protected by Burlington although it may necessitate hauling empties by Burlington from some distance away, including hauls of Burlington cars southbound to Kansas City which may pass Great Northern empties being hauled northbound. Following unification, the cars of the individual applicants would then be New Company cars available for use wherever located on the lines of New Company.

Another reason concerns the relationship of applicants with other railroads. The flow of loaded cars away from applicant railroads far exceeds the flow of cars from other railroads to applicant railroads. Applicant railroads' experience in periods of heavy loading activity is that foreign roads tend to retain large numbers of applicants' cars, particularly those in good condition. Under the car service rules, cars which are made empty at a junction with the owning line must be turned over to the owner at that point unless they are loaded to or via the rails of the owner. Under consolidation, all of the cars owned separately by each of the applicant railroads would become home cars to the unified company at all junction points presently served by each of the separate roads, and subject to return to the unified company under car service Rule 2. At such large junction points as Chicago, St. Louis, Kansas City, Omaha, Denver, Portland, and others, there would be large increases in the number of at home cars to be returned to the New Company for availability to shippers on the lines of New Company.

The situation with respect to specialized cars, including wide-door box cars, box cars with restraining devices, Air Slide cars, covered hopper cars, and the many other expensive specialized types of equipment increasingly needed and demanded by shippers for economical handling and safe transportation of particular commodities, is a field of its own, as they are not part of the general car pool. Under accepted practice, each component line instructs the others of the disposition to be made of its special equipment located on those other railroads. When a special car goes off-line, it usually is not permitted to be loaded unless the owner is included in the road haul, the restriction being a practical one, inducing the owner line to make the added investment in such expensive

equipment. If such equipment were to become part of the general car pool, a railroad considering whether to make the outlay for the purchase of such cars would be deterred from doing so, particularly where, as in the case of applicants, the volume of loaded cars to off-line points exceeds the volume of loaded cars received from foreign lines. Similarly, the result is that special equipment owned by any one of the applicants cannot be used, when made empty on the line of another applicant, to meet the needs of a shipper in that area, but must be returned to the home road. Cross-hauls of empty equipment result, but would be eliminated following consolidation, thus effectively increasing car supply with the same size fleet.

Consolidation would extend the availability of specialized equipment to those shippers who want and need such cars, by elimination of another practice which results from independence of the respective applicant railroads. That practice arises out of a situation involving use of specialized equipment in that when not needed on one of applicant lines they are often used for loading where a common box car would suffice—while empty ordinary box cars are being returned by that line, and at time when the need by the owning line is for the specialized car—thus creating an artificial shortage of specialized cars. Under unification, applicants would allocate the cars more closely fitted to needs of the individual shipper.

In that connection, it is significant to note that the railroad industry is entering an era of use of specialized equipment designed to meet the needs of particular industries. Such a tailoring of service requires large outlay of capital funds to acquire such improved facilities and equipment, but thus equipped the New Company could afford shippers the full benefit of the railroads' inherent mass transportation advantages. In that regard, additional earning power available under consolidation would enable the New Company to have a more effective capital improvement program including production of such equipment to meet public needs. While the several applicant railroads have constantly endeavored to stay abreast of the development of new and improved types of equipment,

the record clearly indicates that the New Company, as a matter of declared purpose would continue that policy and strive to develop, acquire, own and maintain an adequate supply of equipment suitable to its customers' needs at a pace consistent with sound financial practices. However, in connection with future acquisition of equipment the more efficient use of the New Company's cars expected to result from unification would be a significant factor in determining how many and what type of new cars would reasonably be acquired.

Under the proposed unification, car distribution would be handled on a system-wide basis as between the several districts, leaving distribution within the districts to the forces in the respective districts. The districts would provide daily or more frequent reports to the central system headquarters on the number and status of cars in each district, and of loading demands, and on the basis of such data cars would be distributed system-wide to fit the needs of the district, and the district would then distribute the cars to the stations under its control to fit the actual shippers needs. The significant purpose of the centralized car distribution office would be to provide instructions for equitable car allocation system wide. Moreover, empty cars would be returned from non-system roads more readily than at present.

In addition, following unification, the central system headquarters would have available the same source of refrigerator cars that presently exists for the applicant railroads, viz., a call on the FGE-WFE-BRE, a call on the MDT, and the present ownership of Northern Pacific cars. The central headquarters would distribute those cars to the loading areas where required on an equitable basis in the same manner that other type cars would be distributed without regard to car ownership—thus permitting a true pooling of existing refrigerator car supply and a better utilization and distribution to the benefit of shippers of perishable commodities.

Improved balance of traffic. The unified system will not be as vulnerable as the separate railroad applicants are to fluctuations of traffic and revenues arising from such conditions as bad harvest for particular crops, shrinkage in ore, iron and steel shipments during industrial strikes,

and other economic conditions which from time to time affect the volume of traffic in certain commodities and certain areas. In its programs for maintenance, repair and construction or purchase of new equipment, the unified company thus will be enabled to make better plans for regularity from year to year. Thus, unification would tend to reduce the irregularities of employment and enable New Company to arrange for the work and improvements on a more systematic and reliable basis than is now possible.

As previously indicated, the traffic volume of the applicant railroads is markedly different, even though the Northern Lines roughly parallel each other from Twin Cities to the north Pacific coast. The physical characteristics of the areas served by the respective applicant railroads have been discussed, and it is evident that unification would create a better balance of traffic. The better balance among the major groups of commodities is evident, but the results of unification in creating such a better balance extend also to the various commodity classes within the major groups. The differences among those commodity classes on the respective applicant railroads have been well portrayed of record.

Benefits of unification market-wise to producing areas of Northwest. As previously indicated, applicants have concentrations of population at the eastern and western ends of their systems, but the great agricultural, livestock, timber and mineral producing areas of the intermediate territory have only a limited population. There is no city of as many as 200,000 anywhere in the vast area between the Twin Cities and Portland and Seattle. Great Falls, Montana, with a population of only 55,357, is the largest city in the four-state area of Montana, Wyoming, Idaho, and North Dakota.

The Northern Lines have been confronted with the necessity of pricing transportation on the basic products originating in their respective territories at levels low enough to move the traffic the long distances necessary to reach the nation's great industrial and consuming markets in other sections of the country in competition with similar commodities shipped from much closer sources of supply.

Applicants acknowledge that a railroad serving the northwestern sections of the United States and operating for the greater part of its mileage through sparsely populated territory carries an unusual responsibility and obligation to the public which is different from the responsibilities of railroads in other areas of the United States. Further, that if through inability to maintain a proper balance between freight rates and expenses it fails in its ability to maintain market-competitive rates on soundly conceived bases, the damage done does not fall only on the railroad; but falls heavily on the public in the communities located along its lines which are dependent upon continued production and shipment of the products of the area to support the economy which is their livelihood. It is anticipated that the economies which would result from unification would increase New Company's ability over that of the respective applicant railroads, to set charges at levels which, as far as possible, would permit movement by rail of the basic commodities of the Northwest to the market areas of other parts of the country. A large proportion of the traffic of applicants is of the low value basic commodities which, in order to move to market in competition with other producing areas, requires relatively low rates, distances considered. Thus, it is essential that applicants take all possible steps to reduce costs so that shippers can continue to be provided with rates which are essential for them to reach distant markets.

While applicants have made no assurances to reduce their freight rates following unification, it is reasonably expected that the economies from unification will tend to hold down the number or amount of additional rate increases in future years, even though rates of pay and prices of railway supplies may continue their upward course.

While the areas served by Burlington are, in general, more heavily populated than the northern areas, market competition of competing products and the need for maintenance of depressed rates are also found with respect to various products handled by Burlington.

The beneficial effect of reductions in cost of operation upon the rate structure in the Northwest area and upon the development of that territory was expressly recognized by the Commission in its decision in *Acquisition Case, supra*, wherein at page 52, it stated:

> The applicants' proposal to reduce the expense of operation is entirely sound in principle, and is entitled to serious consideration as a step toward ultimately reducing the cost of transportation, thus tending to prevent increased rates if not to lower existing rates, and aiding in the development and prosperity of the territory.

Thus, it is clearly in the interest of the large producing areas involved that transportation service be provided as economically and efficiently as possible, and unification would enable the unified company to achieve efficiencies and economies and to be better able to serve the many producers and shippers who need the railroad services at low rates.

Other benefits. The tracing and location of shipments and the ordering of empty cars will be facilitated under unification, since the records will be maintained and be readily available under centralized control and responsibility. Similarly, the processing of claims by shippers for loss and damage will be simplified. Moreover, because of the expedited handling and the reduction in the switch movements through elimination of interchange among the applicants and through improved yard facilities, the amount of damage from switching impacts or through delay of shipments will be reduced.

On some relatively low grade commodities, the applicable rates at some points are higher for a two-line movement than for a movement handled entirely on one line, since the expenses of interchange are not incurred on the one-line movement. In those situations, shippers from points now on one of the applicant lines to destinations now on another applicant line, including origin and destination on the Oregon Trunk and Oregon Electric, will therefore be paying lower charges after unification.

At various points throughout the Northwest, a shipper under certain conditions, pays a switching charge when one road switches a car to the industry track without having handled the shipment in road-haul service. For shipments where the two railroads involved are now applicants, those additional charges will be eliminated since the unified railroad will perform both road-haul service and switching service and since the expenses of interchange will have been eliminated.

Apart from rate matters, the planned changes in facilities and operations will bring various incidental but substantial benefits to the public at common points. The elimination of duplicate facilities at some common points will release desirable real estate for industrial or urban development. In addition, various communities will benefit by the elimination or substantial reduction in street hazard and congestion. That situation is particularly true at Spokane, where an opportunity will be afforded to remake the entire downtown area of the city in accordance with long-range plans recommended by the city planners. The problem of interference between street and rail traffic at many crossings on the Great Northern line will be eliminated. The results under unification will be noticeably superior to any changes Great Northern might be expected to accomplish alone.

In summary, it is obvious that the benefits unification provides cannot be produced under separate operation by the respective applicants. Despite the extensive degree of affiliation among the applicants, there can be no reasonable expectation that voluntary coordination among the applicant railroads as separate companies could result in the same or similar improvements which unification is designed to provide. In the *Acquisition Case, supra*, within the planned rerouting and consolidation of operations of Great Northern, Northern Pacific and SP&S was described (which failed of accomplishment when the companies continued their independent operation) the Commission stated, at page 52:

> We recognize the affiliation existing between these carriers but we are not convinced that a program of change and rearrangement as extensive as the one

prepared by applicants can be successfully carried out without complete unification, and single control of all facilities.

In a number of recent decisions, the Commission has recognized that even if railroads are under common control (unlike the Great Northern and Northern Pacific here) full coordination and the economies attendant thereon cannot be realized except by merger or consolidation. Compare *Louisville & N.R. Co. Merger*, 295 I.C.C. 457, 493 (1957), and *Pennsylvania R. Co.—Control—Lehigh Valley R. Co.*, 317 I.C.C. 139, 149 (1962).

While some of the coordinations of facilities and operations, especially at common points, might be physically possible without merger, applicants' consultants have carefully demonstrated they are impractical in the present situation indicating that successful large scale coordinations depend upon a basic cooperation between carriers made possible by lack of direct competition, or by some substantial degree of stock control. In the present situation, the parent companies are directly competitive, and there is no question of stock control by either one of the other. While substantial savings are included in the proposal as a result of including Burlington in the consolidation, some of which could be realized through coordination in that they are physically possible, they would be largely for the benefit of one of the parent companies and to the detriment of the other, and therefore would not be agreed to jointly.

While the contention is frequently made, and has been made on this record by some interveners, that the same economies and efficiencies can be accomplished by coordination as well as by merger, it overlooks certain vital factors. No company is willing to share with its competitor an advantage which it enjoys. The unified plan proposed could not be workable under separate ownership of the constituent railroads. It is not realistic to believe that the proposed new through freight schedules, previously described, could be operated under a joint facility or coordination contract. Neither would it be feasible, except by merger, to make the extensive changes contem-

plated at the major common terminals of Minneapolis-St. Paul, Spokane, or Seattle.

Moreover, the necessity of merger as a pre-condition to the realization of improvements was evidenced by the action of the parties during the extensive negotiations as to fair terms of merger. Had it been possible to achieve the results without merger, these extensive negotiations would not have been necessary.

The record indicates that the impossibility of being able to make the cited improvements without merger became a strong motivating force leading to the agreement on terms.

The same principles that apply to dissuade the separate applicant railroads, under independent operation, from combining their routes to produce a better transcontinental through route or from combining their yard operations at the various indicated points also militate against any changes in tariffs to give shippers the additional routing, transit or diversion privileges that will be provided under unification. Such privileges, under separate operation, would short haul the railroad which established them. As has been previously indicated, the propriety of a railroad protecting its long haul and the revenues therefrom has long been recognized. After merger, the unified company will not be short hauling itself when it makes provision for shipments to move over any of its lines through the exercise by the shippers of the expanded routing, transit, or other privileges.

National defense.

An important element contained in the national transportation policy as declared in the Act, is interwoven with the economic growth of the nation, because only a growing, healthy business community can be expected to meet the challenges which war and other national emergencies would present in these days of scientific and technological accomplishment. During a period of national emergency, the defense of our country will, no doubt, depend to a great extent upon the railroad industry's ability to move an immense volume of personnel, materials and supplies connected with such efforts, and,

in that connection, the strength and health of the railroads is of paramount importance.

That the proposed unification will improve the ability of the combined applicant railroads to provide the speedy and efficient transportation that would be needed in great volume during a war or national emergency is well demonstrated by the record. The proposals in the aggregate do not contemplate a contraction in capacity to handle traffic, but, on the contrary, are designed to better utilize existing plant and facilities and thereby realize an increase in capacity. The basic evidence supporting that conclusion is principally that phase of the Wyer Report dealing with arrangements for speeding the freight on its way over the shorter and faster routes using the most suitable segments of each railroad, the maintenance of the alternative routes to the same high standards, and furtherance of CTC installations. Other technical evidence on that subject is embraced in proposals for construction of new facilities of the most modern kind, and in detailed testimony of numerous officials of the applicant railroads, covering such operational subjects and new faster schedules, improved methods of interline, etc.

The premise of the applicants is that unification would substantially contribute to a meaningful improvement in the ability of the component railroads to carry out their share of such a task because consolidation of the properties would permit New Company to operate more expeditiously and efficiently than could the component railroads acting separately, and because New Company will have the financial strength and resources to maintain a fully modern transportation plant at all times.

In dealing with the subject of increased capacity of the proposed unified system, it is axiomatic that with the geographical and physical facts presented here, the integrated system will have a greater capacity than the sum of the capacities of the component railroads operated separately. New Company would have available, with minor exceptions, all the existing facilities of the applicant railroads, and, in addition, would be able to use the segments of line and improved facilities with flexibility to meet any given situation. Retention of existing routes,

some of which would be alternative main line trackage to the principal transcontinental routes, together with other cross-connecting trackage, would permit such flexibility of operation over different trackage so essential in time of war or other national emergency. The proposed new physical improvements in plant and facilities justified by combining the traffic of applicant railroads under the proposed plan of operation could not be accomplished under separate ownership by the component companies, and would not only facilitate the sorting of heavy wartime or emergency traffic and speed essential shipments, but would also prevent congestion on the unified system. Moreover, those improvements would provide substantial additional capacity on the principal routes which without unification would not be available for use in time of national emergency. The evidence shows that where the present main lines of applicants could carry about two and a half times the amount of present business, the unified lines would have an increased capacity and could handle three times the present business.

The plan of operation contemplated for New Company would benefit the national defense in several significant ways. The speed up of freight service and the increased availability and flexibility of equipment would be advantageous in movement and delivery of material. The flexibility and more efficient action possible with equipment and operations of applicant railroads under single management would be of great value in those circumstances where speed and maximum utilization of cars is imperative. Delays automatically occur when traffic is transferred from one railroad to another. In that regard, diversion of traffic from one railroad to another between applicants, as is frequently the case involving large military movements in wartime, would not provide as satisfactory and expeditious handling as would be produced by the ability of the unified company to use its alternate lines for the speediest handling of its wartime traffic.

Despite the lack herein of identifying federal transportation requirements or other criteria for a national emergency and the lack herein of participation by parties who are primarily concerned with that question, nevertheless

there is no doubt that the needs of the nation for wartime or emergency transportation can be much better served under the unification proposed than under a continuance of separate operations of the applicant railroads.

Public relations efforts.

Since prior to the filing of the applications, extensive public relations efforts were instituted and programs organized by applicants with the view of giving the widest possible publicity to the anticipated advantages of the proposed unification. Officials, counsel and other representatives of applicants were assigned to participate in meetings of trade associations, industry promotion groups, chambers of commerce, and other persons in the territory involved. Interested persons were solicited to support the applications by offering testimony at the forthcoming public hearings, and to forward letters and resolutions endorsing applicants' objectives.

Applicants prepared and gave wide circulation throughout the territory involved to a comprehensive brochure entitled "Consolidation-Key to Transportation Progress," which, following a statement referring to the subject unification efforts and signed by the presidents of Great Northern, Northern Pacific, Burlington, and SP&S, sets out four major benefits expected to result from unification: (1) faster freight service, (2) improved freight car supply, (3) wider routing, better transit and diversion privileges, and (4) operating economies which would generate important new source of capital for modernization and improvements, each of which portrays the subject in capsule form. Other subjects discussed therein deal with railway employment and the consolidation, passenger train service by the unified railroad, and preservation and increase of healthy competition. The brochure utilizes maps and charts to depict the present separate systems of applicants, the proposed unified system, a statistical summary of mileage, employment at end of 1958, 1960 railway operating revenues, proposed organization of the unified system by districts, and favorable expressions in numerous newspaper editorials.

Principal shipper support.

Early in the proceedings, the hearing examiner instructed all parties to review carefully the evidence they proposed to offer with a view to eliminating duplicating and cumulative evidence dealing with public and shipper witnesses. With minor exceptions, the parties cooperated in that effort.

At each point where hearings were held throughout the broad territory involved, numerous individuals appeared at applicants' request and testified in support of the applications. A number of individuals, however, who were present to testify for applicants were not permitted to testify because it appeared that their evidence would be cumulative and upon reminder by the hearing examiner of the cumulative evidence rule, the witnesses were either withdrawn or not called. At a number of points throughout the territory where applicants' witnesses were present to offer evidence, objections raised by some interveners in opposition to what they considered cumulative evidence were carefully considered by the hearing examiner. The objections were primarily with respect to witnesses whose interests at one hearing place appeared to be similar to those at other points, but actually their interests did not correspond with the interests of shipper witnesses from other geographical areas and locations. The hearing examiner, therefore, permitted the evidence to be received as not cumulative after giving careful consideration to the commodity, the geographical area involved, and the peculiar transportation problems of the particular shipper. While the presentation of numerous witnesses making similar of identical assertions at the same locations as to their transportation problems would normally appear to be burdensome to the record and properly considered cumulative, there is a distinction here. Shippers located at different points in a broad territory such as here involved, because of their geographical location, the commodity or commodities they ship or received, the nature and availability of service, the transit time involved, and other similar transportation matters which affect them, should be permitted to present their evidence, that the Commission may properly assess the

public interest manifested herein. The hearing examiner's rulings should be affirmed.

Shipper evidence is significantly important in proceedings of this nature. Shippers are the primary source of all freight traffic, and their opinions are, accordingly, of impressive weight. *Brotherhood of Maintenance of Way Employees, et al.*, v. *United States, et al.*, (No. 23,467) 221 F. Supp 19.

Considerable evidence in support of the application was submitted by representatives of freight bureaus, manufacturing and traffic associations, chambers of commerce, associations of shippers, and individual shippers throughout the territory served by the applicant railroads. The substance of such testimony was that unification would give the public faster and more dependable transportation service, that unification would provide shippers with better car supply, that unification would provide the shipping public with more advantageous transit and routing privileges, and that unification would provide numerous additional benefits to shippers and others such as facilitation and simplification of tracing and location of shipments, ordering of empty cars, and processing of claims by shippers, through centralized record control and responsibility. It was also their testimony that because of expedited handling and reduction in switch movement (through elimination of interchanging between applicant railroads and improved yard facilities) the amount of damage from switching impacts or through delay of shipments would be reduced. Some support evidence included, apart from convictions that rate relationships would be stabilized, or improved, the fact that planned or programmed changes in facilities and operations would provide various incidental but substantial benefits to the public at common points, for example, elimination of duplicate facilities would permit release of desirable real estate for industrial or urban developments. Other support evidence indicated that sales opportunities in distant markets would be preserved or improved, and that the railroad applicants' ability to compete with other modes of transportation would be increased.

Some support was evidenced by shippers, consignees and other public witnesses who testified for various interveners but qualified their support to the extent of favoring certain conditions requested by the interveners whose interests they support principally.

The geographical location of shippers served by applicants and the nature of the products they ship require a high standard of service as to speed, reliability, and car supply, which cannot be provided without large and continuous expenditures. Significantly, in providing such service applicant railroads would continue to meet competition from other modes of transportation, principally highway, which it is expected would become more acute as projects such as the federal interstate highway system progresses.

By far the largest group of shippers and other public witnesses (comprising in the aggregate some 307 witnesses, representing 39 shipper associations, 237 shippers and receivers of freight, 66 organizations of various types, such as governmental bodies, chambers of commerce, traffic associations, and similar organizations, and others) testified in support of the unification as proposed. Of those witnesses, 27 represent 39 shipper associations having more than 483,913 members who are farmers, livestock producers, fruit and vegetable growers and processors, grain elevator operators, sand, gravel and concrete producers, ranchers, wool growers, auction market operators, grain grower organizations, and lumber and building materials producers and dealers, etc., who ship or receive annually more than 296,744 carloads of numerous commodities as varied as agricultural commodities or products, livestock, poultry, fruits and vegetables, wool, sand, gravel, lumber and building materials, from and to points in the territory involved, 209 of the witnesses represent 237 shippers and receivers of freight who ship or receive more than 917,824 carloads annually of numerous commodities, including wood chips, logs, plywood, lumber and related products, agricultural products, fruits and vegetables, grains, feeds and related items, coal, ores, fertilizers, iron, steel and related products, automobiles, heavy equipment, livestock, petroleum prod-

ucts, oils, asphalts, and freight forwarder shipments, from or to points in the territory involved, 60 of them represent 66 organizations (6 governmental bodies, 4 traffic associations, 46 chambers of commerce, and 10 similar commercial or industrial promotional organizations) with offices and interests at numerous points throughout the territory involved and concerned with the transportation problems of its members or of particular portions of the territory involved. In addition, because time limitations for orderly hearings at the various designated points throughout the territory involved did not permit testimony of 48 other persons, representing 46 shippers and receivers of freight, 2 shipper associations and 10 similar organizations who were available to testify, it was stipulated that if they had testified their evidence would have been similar to the evidence of certain witnesses who had testified.

Another 10 witnesses representing a governmental body, 4 chambers of commerce, 5 shippers, and 10 traffic associations, testified in qualified support of the unification indicating a desire for the imposition in any approval order of one or more conditions in addition to those proposed by applicants.

Expectation of faster service or more dependable service, or both, was stressed by 191 shipper or shipper association witnesses as reason for support of the applications. That group included 63 witnesses representing businesses connected with marketing of agricultural commodities or products. Selected examples of such aspects of the supporting evidence as are pertinent to this discussion are desirable both for illustration and for clarity. Some shippers, it is noted, are concerned with seasonal movements. The great variety of fresh fruits and vegetables grown in the Pacific Northwest provides significant examples of their commodities. Shipped largely in transcontinental movement, that produce not only meets strong market competition at eastern and southern destinations but is highly perishable.

An association of growers (in Washingtn and Oregon) of apples and other deciduous fruits (20,000 carloads annually) is concerned with shorter routings and expe-

dited transit time through use of improved schedules and alternative gateways as aids in marketing the fruit and also to minimize its deterioration, assuring better quality fruit for the consumer and the best possible market price for the producers. They believe the New Company under unification will offer better, faster and more efficient and economical service than the component lines can produce separately.

A Washington association of shippers (4,500 members), concerned with transit time, evidences the importance of expedited service in that the difference of a day's time or even a few hours in transit of a carload of cherries moving to the markets of the midwest and east is the difference between profit and loss.

A Washington shipper of apples (425 carloads annually), the bulk of which are sold at eastern auctions where the freshest and best quality fruit commands the highest prices, finds that each additional day a car of its commodity is in transit frequently means a lower price for the product and it considers that the proposed faster service by the unified company is important to it because the shipper guarantees the condition of the product on arrival.

A Washington association of 450 growers and processors of asparagus (100 carloads annually during the season), the most perishable of any fruit or vegetable handled by the railroads, indicates that the shipping season for fresh asparagus lasts about 30 days, that the best market from a price standpoint is eastern United States, that faster schedules of service as advanced by applicants is extremely important to insure arrival of the commodity on the east coast in good condition, and that following unification it may anticipate increased sales because of faster service.

A manufacturer of fertilizer with plants in Minnesota and North Dakota is concerned with seasonal movement (420 carloads annually) of its commodity as well as supplies from distant points. Approximately 80 percent of its production is forced into a six-week period of the year. Since it is not economically feasible to build year round storage facilities, it is dependent upon fast and

dependable freight service to clear the point of manufacture and reach the farmer, and a one or two day delay would often influence a sale.

A Minnesota distributor of anhydrous ammonia in tank cars moving to various points in Minnesota and North and South Dakota where trackage is leased for spotting the cars and making direct delivery to farmers, indicates that weather is an important factor in getting the tank cars unloaded and the product out to the fields, and any delay in terminal handling or line-haul movement can mean both loss of business and serious consequences to the farmers who depend on speedy delivery of the commodity.

Another shipper of fertilizer (4,300 carloads annually) from a point in Alberta, Canada, to various points on applicants' lines indicates that transit time is extremely important, that a single day's delay may make the difference between obtaining or losing a sale. The proposed unification would result in the shortening of its routes thereby providing a saving of up to two days on some shipments.

While expedition in transit is not always vital to shippers of lumber, some 54 witnesses who ship or receive timber, lumber, or products thereof, indicate it is important in connection with some or all of their shipments. A large paper company operating over 80 mills and plants in 30 states, 38 retail lumber distribution yards and six regional warehouses (over 200,000 carloads annually, including 7,800 carloads over applicant lines) concerned with movement of forest products from the Pacific Coast region indicates that if the northwest is to compete with factories elsewhere in the country closer to eastern markets the products must move safely and swiftly to destination and it would welcome any improvement in rail transit time. Elimination of delays coupled with the provision of more dependable service would assist it in planning production and shipping and thus avoid many customer complaints.

An Oregon lumber company (2,375 carloads annually) considers faster service important in that it would receive payment sooner and result in a reduction of interest

charges at the bank. Another shipper of lumber (3,300 carloads annually) indicates faster time not only accelerates payments by customers but enables the shipper to be in a better position to compete in important consuming areas.

Competition in the lumber and forest products industry has always been intense, but of late foreign competition has come to pose new problems. A producer and shipper of prefinished hardwood plywood (4,000 carloads annually) with plants in California and Oregon has its largest markets in the midwest and east. Its principal competition emanates from Japan with its lower labor costs. Although the Japanese have the advantage of lower production costs, the witness can deliver more quickly. Faster and dependable rail service is necessary to remain competitive. Another element of concern is that the shipper has considerable capital tied up in its product for about 20-22 days after manufacture and while in transit. It supports the application on the basis that unification would permit not only the efficiencies in equipment and facilities which are an obvious assist, but more importantly the proposed new and faster schedules.

A large paper products manufacturer (18,000 carloads annually via applicants) with 15 plants throughout the United States must schedule its production to meet demand. Its customers strive for fast turnover to avoid high investment capital costs. Since the field has fast turnover, the shipper cannot afford to be stock short or it jeopardizes its sales position. The industry is highly competitive, and to keep customers satisfied, it must be able to get cars on short notice and receive fast and dependable service. It has substantial investment in the Northwest in order to capitalize on the forest products available. Most of its products move to the more populous centers both on the West Cost and in the Midwest and it supports the applicants' planned improvement of operating schedules under unification as a needed assist in its business.

One of the most significant effects of the trend of increasing costs in the past two decades involves inventory control. Many retailers are forced to make sharp reduc-

tions in current inventories, with the result that expeditious and dependable transportation service has changed from what was once a desirable element to what is now an essential factor. A Montana wholesale grocery distributor (500 carloads inbound annually) expects the proposed plan of operation to decrease terminal time through the proposed new classification yard facilities. It also expects that more efficient make-up of trains and routing of traffic over shorter routes will decrease delivery time. It considers those advantageous important because its customers can't carry heavy inventory and must replenish stocks often, quickly and efficiently without unnecessary tie-up of capital.

A Minnesota chain grocery firm (3,000 carloads annually) with shipments moving east from the Pacific Northwest to North Dakota and Minnesota destinations, is engaged in a highly competitive business and its profitability depends on volume and rapid turnover of inventories. With limited warehouse space, fast, dependable transportation service is essential to its successful operation and it supports the applications on the basis that the proposed service would be an improvement and enable it to better meet its needs.

Capital is often required for merchandise in transit as well as in connection with goods stocked on the shelf or in the warehouse. A North Dakota wholesale distributor of candies, tobacco, and liquors (45 carloads annually) indicates unification would benefit its operations because of the expected faster service. Because sales volume does not warrant full cars to some points, there are necessary stops for partial unloading, and an interchange from one applicant's line to another, with concurrent one to two days' delay in arrival time which is costly. It expects unification to eliminate delay under the proposed single line haul which would have important bearing on its volume of capital tied up in shipments in transit.

Thirty-one witnesses representing businesses interested in movement of mineral or petroleum products concerned with faster and more dependable transportation service evidenced support for the proposed unification. A processor of oils and asphalts (2,500 carloads annually via

applicants) with plants in Washington and Idaho, bring raw materials from Wyoming, Montana, and Canada. Time in transit is important because the oil or asphalt leaves the refinery with adequate heat to facilitate pumping and handling. The longer the time in transit the more reheating required at the delivery plants, which is costly. Thus, it is vitally concerned about delays in transit or terminal handling. It expects unification would produce faster service and an opening of a gateway, both highly beneficial. A processor of liquid petroleum gas (1,900 tank carloads annually) markets the product obtained initially from wells in western North Dakota where it is processed and then moved by tank car to an upper Midwest marketing area where it competes with pipe line deliveries from the Southwest. Shipper's concern is with tank car rental costs which unification would assist in reducing by elimination of some interchange and terminal delays currently experienced. Faster turnaround of equipment is essential to a lowering of its costs which would be accelerated through expected use of the proposed new freight schedules. Moreover, to keep competing with other suppliers, it is imperative that it have faster rail service to continue supplying its marketing area, and it supports the application on the basis of the expected improvement under unification.

A producer of manufactured goods often faces a dual problem, that of frequent inbound shipments of raw materials because it maintains small inventories, and because failure of inbound shipments to arrive promptly as scheduled often results in a plant shut down. Twenty nine witnesses evidenced concern with that situation. A Minnesota producer of ammunition (190 carloads annually) whose consignees are unable to store and warehouse sufficient quantities of the commodity to take care of long range needs is concerned with time in transit on its shipments. Often shipments are made on short notice. The proposed schedules evidencing reduction in transit time appeal to that shipper. Inbound shipments of lead shot (100 carloads annually) are important because any substantial delay in the inbound shipment may result in lack of supplies, and a consequential plant shutdown. It

considers the aspects of unification resulting in elimination of terminal delays highly important and beneficial.

Quite often, products must arrive in accordance with predetermined construction schedules. An oil field construction and maintenance firm concerned with movement of pipe-coating (35 carloads annually) supports the unification for the reason that opening up of new routes on a single line basis and elimination of terminal and interchange delays should help to speed up service. Current transit time involves seven to eight days, utilizes circuitous routing and is undependable. It needs faster and more dependable service due to the tight construction schedules required between pipe laying and pipe coating phases of its projects and because of a desire to reduce costly and unnecessarily wasteful stand-by time of crews when shipment of coating materials is delayed.

A Minnesota supplier of structural steel and reinforcing bars (50-100 carloads annually) to construction companies faced with requirement of prompt delivery to its customers, because of expensive daily penalty clauses in contracts under which its customers are engaged on construction projects, has experienced situations where failure to meet prompt delivery has resulted in loss of future business. Time in transit is thus important to this shipper for the success of its business depends on promptness in delivery and it, in turn, looks to the proposed unification to assure its customers of prompt service.

A Montana supplier of oil field equipment and grain storage bins (4-40 carloads annually) receives supplies from Kansas City and Oklahoma City area and supports unification which would enable it to use stop-off cars over a wider area, and result in faster time in transit through elimination of interchange, important in keeping inventories to a minimum.

Transit time is of great importance in connection with the movement of livestock as reflected by the evidence of some 20 witnesses. A Washington packinghouse (300 carloads of hogs annually) indicates time in transit is of greatest importance because of the perishable nature of the product and that the most efficient handling is necessary to prevent damage or shrinkage. It receives

shipments from the Dakotas, Iowa, Nebraska and Minnesota and expects unification to permit savings in transit time of its shipments up to 24 hours, thereby enabling it to take advantage of favorable markets.

Several Montana livestock auction markets (aggregate approximately 2,000 carloads annually) indicate that in shipping livestock speed of delivery in best possible condition at lowest cost is essential to satisfactory marketing. Also, that in so doing it must avoid extra feeds which is expensive and shrinkage (which some times occurs up to 20 percent) which results to the disadvantage of producers and credit agencies which support them in that it gives reason for buyers to shun the particular producing area. They support the application with the expectation that the proposed new yard facilities at Spokane and Twin Cities, the faster transit time, the expanded single line service, and elimination of transfer from one railroad to another in some instances, would mean faster delivery time.

More than 150 shipper and shipper association witnesses evidenced an anticipated improvement in car supply as a reason in support of unification, but for various reasons. Selected examples of such aspects of the supporting evidence are illustrative. A Washington producer and shipper of lumber and fruit (1,200 carloads annually) demonstrated that because of the predominant eastbound flow of cars there results, together with other factors such as seasonal peak on certain commodities and increased demand on specialized cars, periodic car shortages at various times, that the lack of cars when needed causes unnecessary expense through labor delay, and additional storage charges, whether the commodity be lumber, apples or chips; that if provided with cars when needed much unnecessary expense would be averted and employees would not be required to be furloughed because of the shipper's inability to continue operations on schedule.

An association group representing numerous Washington and Oregon fruit and vegetable growers and shippers indicated that their shipments, because of their perishable nature, require protective service; that they must

have an adequate supply of refrigerator cars; that at times during heavy movements they have experienced car shortages; and that centralized car distribution as proposed under unification would minimize car shortages and aid their membership in securing adequate supply of cars, as well as permit better utilization of available cars.

A Minnesota lumber dealer (40-45 carloads annually) evidences an example of increasing demand for specialized equipment. The standard box car has for years been the backbone of railroad equipment, yet the development and use of mechanized loading and unloading devices created an industry-wide demand for cars with wider doors virtually overnight. Utilization of double door cars results in savings to that shipper of substantial labor costs compared with the equivalent cost of unloading a standard car.

An Oregon plywood manufacturer (2,500 carloads annually) who also ships veneer and wood chips is likewise interested in the prospective improvement of car supply, particularly of double-door cars from both the standpoint of the dimensions of the product and the manner and means used in loading and unloading. It considers the proposed pooling of such equipment under a single distributive agency a definite improvement. It is often faced with using single-door cars with attendant increase in costs for loading and unloading (paid by its customers and billed to the shipper) rather than lose the business, but prefers to use the more suitable and less costly equipment and maintain satisfied customers.

A large manufacturing shipper of paper products and wood pulp (41,000 carloads annually) recently installed mechanical loading equipment in its plants to expedite loading and reduce expenses, which equipment requires use of wide-door cars. Because other shippers have also installed similar equipment, a shortage of wide-door cars has resulted, and the shipper has been required to divert much traffic to motor carriers, and postpone filling of orders and store the shipment until suitable cars were available, all at considerable expense by way of handling charges. It views the prospective plan of single control

of car supply under unification as a solution to much of its problem in that with the large number of terminals under single control the availability of cars would not only reduce its distribution expenses but permit better service to its customers.

The demands of shippers with respect to the transportation of petroleum and mineral products relate to different types of cars. To a Minnesota group of five highway construction, mining and related businesses (9,750 carloads annually of sand, gravel, ores, etc.) car supply (standard, covered hopper cars, ore cars and 60 foot gondolas) is a major problem in its relations with the two Northern Lines. It has experienced simultaneous shortages on one and surpluses on the other, which it expects would be eliminated, and the car supply problem solved on unification by the pooling of equipment. Moreover, it considers unification would permit flexibility in routing, permitting savings in turn in interchange and cheaper single line rates where joint rates are in force as between the two lines, with resultant better service to its customers.

A Minnesota shipper concerned with petroleum refining and distribution (7,000-12,000 carloads annually) expects unification would enable increased efficiency in utilization of cars; that where it uses the two Northern Lines today and one has a shortage and the other a surplus of tank cars, after unification greater flexibility in tank car utilization would result, in that the need to allocate tank cars destined for particular trackage would be eliminated.

A Minnesota oil company brings low grade petroleum residuals (1,500 carloads annually) from Wyoming to blending plants in Minnesota, moving via Sioux City. Following unification, it anticipates the cars (privately owned and leased) would be able to move via the additional gateway of Laurel, 120 miles shorter, and with the heavy volume of cars (65-75) constantly in service the savings in tank car investment through use of the shorter route and quicker turn around can be reduced by about 20 cars or $200,000 annually, and concurrently produce more availability.

A power company which ships lignite coal (5,800 carloads annually) from a North Dakota point to its steam plant in Minnesota, would be unabled to utilize a shorter route than the present service route which would permit savings of 178 miles per car for the round trip, or 1,100,000 car miles annually, subsequent to unification of the two Northern Lines.

The record reflects that the above-selected examples may be multiplied many times throughout the system of the New Company as a result of unification and would occur with respect to all commodities. A Washington merchandiser of livestock (607 carloads annually) supporting unification has on many occasions required cars for outbound movement via one or the other Northern Lines when the particular line requested did not have the cars available, although the other line did have cars available. Because it could not expect the other line to furnish cars for the line selected, it considers that the problem would be eliminated by unification, and the cars would be available regardless of which route they were to move.

The experience of numerous other witnesses was similarly evidenced. A Minnesota livestock shipper (2,400-2,700 carloads annually) on trips to Montana seeking cars on one of the two Northern Lines with no success, found a number of them on side tracks of the other line. A Montana livestock growers' association evidenced significant facts respecting the needs of livestock growers and shippers. Shipments of calves must be preplanned, for example, so that weaning comes at the last possible time prior to shipment which must move rapidly to destination. Arrangements for terminal handling, feeding, fear of shrinkage loss, and other items of concern are such that unless the car supply is adequate and spotting timely, the buyer would be less apt to buy. It considers that the combined fleet of the applicant railroads properly distributed under a single and unified control would permit a more flexible and realistic availability of cars than at present.

Since applicant railroads move great volumes of agricultural products, such as grain and grain products, in

addition to the fresh fruits and vegetables grown in the Pacific Northwest, problems of car shortages frequently face many of those shippers. An Oregon miller, shipping flour, cereals and millfeed (9,000 carloads annually) has from year to year been plagued with periodic car shortages on one of the two Northern Lines in Montana, while on the other line there was an adequate supply of cars, resulting in loss of business to the shipper. It expects that following unification with the equipment in a pool controlled and distributed by a single agency, a greater availability of cars would be the obvious result and its car supply problem eliminated.

A Washington brewery (2,700 carloads of beer annually) utilizes railroad transportation for relatively short hauls, has fostered and promoted heavier beer loadings, but has continually been faced with inadequate supply of large (or damage-free) cars. It considers that more equipment would be available for movements within the Mountain Pacific territory for the reason that movements that are presently interline in nature would be single line and the likelihood of keeping the cars on line would increase, particularly when the originating carrier is assured of again having the car immediately available for future use.

A Montana grain elevator operator (220 carloads annually) has difficulty in obtaining cars nearly every year, which is costly in two ways. First, it must upgrade many of the cars by expensive repair, and second, it is often unable to properly service the grain producers in the area, and when cars are not available the grain must be either refused or ground stored, which entails additional loading and unloading expense, together with the hazard of deterioration, and commanding a lesser price. Occasionally, when required to ship grain to meet buyer and export shippers' schedules, inability to get cars means it is unable to meet those schedules, with consequent loss of business.

A Colorado milling and elevator company shipping grain and grain products (over 6,000 carloads annually) has experienced that not only are car shortages occurring more frequently, but the condition of the cars is becoming

progressively worse. As an illustration, it indicated that during a seven-weeks' period out of a total of 878 cars offered by the railroads for loading, over 50 percent were rejected because of condition; and of those accepted, many had to be lined before they would be used. It considers unification would improve the situation through better availability and cited a recent occasion when empty class A cars of one of the two Northern Lines were the only available cars at an off-line point (although on the line of another applicant) destined for return to the owning line and could not be used under existing car service rules; that under unification, such a situation would not occur as they would be on line and the cars would have normally been assigned as requested.

A Kansas operator of grain elevators or grain terminals at some 72 points in five states (4,810 carloads annually) evidences the recurrent shortages of cars suitable for grain shipments over many years, that numerous efforts have been made to improve the situation, and that the subject unification with its resulting broad territorial coverage offers a realistic opportunity for better car supply in that the New Company with its broad base because the cars of all the applicant railroads would be under single control would with great flexibility be enabled to shift cars from area to area as the harvest season progresses northward and the need for cars develop. Also with availability of new and shorter routes and improvements in facilities, reduction in empty car miles and elimination of some interchange should permit more cars to become available for loading.

The grain industry is not unique in its concern over car supply. The sugar industry likewise demands specialized equipment and applicants have continued to purchase or base new bulk cars for transportation of sugar in bulk, and unification through pooling under control of a single agency all specialized equipment as proposed should assist in a better distribution of those cars to meet shippers' needs. An example of such needs as demonstrated by a sugar refining company with operations in Minnesota concerned with transportation of sugar beets and related items (2,500,000 tons annually) loaded

during a specified two-weeks harvest season over 800 open top cars per day. The problems of the sugar beet growers, which are somewhat similar to those of the refining companies who purchase the beets, are significant. The commodity is perishable, is harvested during a short 20-day fall season, during which gondola car requirements for movement to refineries are heavy. The commodity must move quickly to avoid loss through shrinkage, freezing or additional costs of handling if beets are stored open at the farm site. The pooling of cars of the various applicant lines under single agency control would enable New Company to meet the requirements of the farmers as the harvest season progresses northward.

More than 145 shipper and shipper association witnesses evidenced expectation that more advantageous transit and routing privileges would result upon unification. Some 35 shipper and shipper association witnesses evidenced an important concern that they be able to stop a shipment en route for such purposes as milling, fabricating, processing or storing. This is particularly true in the lumber industry with respect to milling in transit. Significant examples warrant discussion. A Washington manufacturer of finished lumber products (500 carloads annually) receives lumber from origins on one of the two Northern Lines and plywood from origins on the other. With its principal markets in the east and new business developing in the middle west, a substantial portion of its business is milling in transit. While it now has the privilege of milling lumber and plywood in transit, it often cannot utilize transit one one of those commodities because the outbound product contains a mixture of lumber and plywood. When that occurs, it must select the outbound line that originated the largest portion of the finished product. Normally, that would be lumber, and since plywood, which is an integral part of the product, originated on one line, it cannot use that portion of the shipment on transit on the other, and is thus penalized. Unification of the two Northern Lines would result with the origination of lumber and plywood on the same line of railroad and enable it to transit outbound products without payment of penalty over and above the through rate.

To some manufacturers, which do not now choose to ship their products when the higher two-line or combination rate applies, unification would permit them to broaden their marketing area and their sales. A Washington producer of lumber and chips (700 carloads annually) located on one of the two Northern Lines is anxious to mill lumber at a Montana point on the other. It has lost sales because of its inability to do so at present. Following unification, it will be able to stop cars destined for points in the east, for milling in transit on the other line which should increase its sales.

Unification will permit certain producers to broaden their points of supply or, alternatively, to simplify their accounting procedures. An Oregon producer of millwork and cutstock (199 carloads annually) conducting basically a transit operation, located on the line of an applicant subsidiary must obtain various types of lumber from different locations in the Pacific Northwest, bring it to its plant for processing, then forward the shipment to customers throughout the United States. Its sources of special types of wood are not always near the line of the carrier that must participate in the outbound transit move. Because it receives shipments from each of the two Northern Lines and their subsidiary, it must be concerned with keeping them separated in its plant and using the lumber for the correct customer in order to take advantage of transit. With its type of operation, it would be of advantage to have the greater flexibility of inbound and outbound routing of transit cars that unification would produce.

Lumber is not the only industry which would benefit from the broader transit privilege. A Minnesota merchandiser of grain and grain products (45,000 carloads annually) anticipates another advantage of the unification, namely, better routes than now exist. It maintains a flour mill at a Montana point served by the three principal applicant railroads. A portion of the wheat required by the mill is produced along the line of one of the two Northern Lines north thereof. When the wheat is used the product cannot economically move beyond the point on the line of either of the other two applicant rail-

roads, but must go back over the line of the railroad originating the haul and in order to move either east or west, there must be a substantial back haul for which a substantial charge is levied. It considers unification would result in creation of a new route which would eliminate the back haul mileage now involved and since there would be no back hauls, and the route would be relatively direct, it would expect that penalties now incurred would be eliminated or substantially reduced.

An Oregon broker of feeds and fertilizers (1,050 carloads annually), having shipping requirements in some respects seasonal, is concerned with materials stored in transit at Pacific Coast points. At certain periods transit tonnage over the two Northern Lines becomes unbalanced, with resulting shortage of transit on one line, while transit is lost by expiration on the other. Business which otherwise could be handled is lost to competition from the Gulf area solely by reason of loss of transit privileges. Unification would allow it to take advantage of all storage in transit privileges on tonnage recorded on the two Northern Lines which would place the shipper in a better competitive position.

That type of transit privilege would also be of value to producers of manufactured goods. A South Dakota steel fabricating company (304 carloads of steel and steel products annually) moves the steel mill product inbound and fabricates it for outbound movement. It moves outbound by its own trucks which limits the geographical marketing area. Since its business is competitive, it must necessarily develop possibilities for extending its marketing area. It has plans to extend its efforts in North Dakota and Montana. Unification would permit it to materially broaden its territory. The fabrication in transit privilege is important when the mileage beyond its plant is greater than seems to be the maximum distance for efficient operation of its trucks. The difference in freight rate the privilege represents is important in its highly competitive field.

Another transit privilege important in traffic management for many shippers, not only in competing for business but in handling that business economically, is the

ability to stop a car to part load or unload at intermediate points between origin and destination and yet preserve the single factor rate to destination. Some 82 shipper and shipper association witnesses evidenced support of unification for that reason. Some selected examples of that privilege warrant discussion. A Washington association of fruit growers (80 members who ship some 350 carloads annually of apples, pears, cherries, etc.) engaged in packing, storing and marketing of fruit expects that the benefits unification would bring by way of additional stops in transit would enable it to compete with other areas for markets. In some markets, it cannot compete because it cannot stop off to partial unload except by using truck service which is an added expense. Unification would permit direct rail delivery at no extra cost to numerous additional points and areas and enable it to compete in many more markets.

A Minnesota lumber wholesaler to retail lumber yards in the northern tier of States (600-900 carloads annually) considers the privilege of stop to partial unload of particular importance. Many of its customers with small retail yards who depend upon it for supply cannot afford full carloads of material. Much of its business involves dividing cars between two or more receivers located near each other on the same railroad and is handled as a carload shipment. If, however, the receivers are on different railroads (of the two Northern Lines) it cannot arrange to divide the car unless it pays an additional local carload rate from one of the two Northern Lines to the other. Consequently, it must send a car on to another receiver on the same railroad who may be located some distance with a result the railroad hauls a partly empty car some distance more than it otherwise would, and the customer on the other line must wait until it can find (a) another car of what the receiver wants which (b) originates on the railroad which serves him, and (c) can go on to another receiver located on that railroad who wants the remainder of the load. That situation often results in loss of customers to both the shipper and the railroads. Under unification, the stop to partial unload provisions would be applied without regard to the former separate existence

of the component lines and should be beneficial to the lumber industry.

The relation of that privilege to shipping costs is important to some shippers as it would permit the splitting of cars with dealers at numerous points which cannot now be accomplished. A Montana distributor of paper products (30 carloads annually) evidenced that concern and showed that the greater availability of part car shipments would enable it to maintain smaller inventories and thus reduce its financing charges. Flexibility of stopping cars in transit for partial unloading at stations over the unified system would allow it more flexibility in maintaining adequate stock at economic cost.

The privilege is most important in connection with specialty items, which by nature are sold in small quantities. A Montana school supplier (20 carloads annually) receives items which by nature rarely result in full car shipments. Unless it can split a car between several, it has to pay higher transportation costs. It, too, desires to maintain a smaller inventory and adequately serve its trade. Unification would permit dividing and splitting of carloads to points in a broader territory which cannot be done today.

An Illinois manufacturer and marketer of grain and grain products (12,000 carloads annually) has many customers who receive small quantities and infrequent shipments and with the two Northern Lines operated separately, it finds it difficult to arrange stop off combinations to suit the inventory requirements of two or three customers, and resorts to trucking in some instances, resulting in substantial additional expense.

A Minnesota manufacturer of steel toys (300 carloads annually) ships in both straight carload and less than carload shipments. Part of its shipments are consigned in cars which receive stops to part unload. Occasionally, it has shipments of less than carload quantity to points on the lines of another applicant railroad, but could not include that shipment in a part unload car destined for points on the line of railroad on which it is located. Unification would enable it to combine such shipments for all points on the unified system at lower through carload

rates and at the same time broaden its coverage, increasing its sales as a result of wider routing privileges.

A California freight forwarder (1,400 carloads annually via applicant lines) anticipates similar advantages in shipments to its receivers in Washington and Oregon. It presently uses the Bieber gateway on its shipments to Spokane, and desires to use stop off cars destined Spokane, at Yakima en route for partial unloading, but presently is unable to do so because SP&S which transports the cars between Bend, Oreg., and Spokane does not serve Yakima. To reach Yakima on competitive rate basis presently, it must route via Portland and Seattle, thence over Northern Pacific to Yakima; or via Union Pacific from Portland to Yakima, and neither route has enable it to be competitive time wise with motor carriers. Under unification, its receivers in the Yakima area would be provided with substantially faster less-than-carload service by rail from Southern California, and at Olympia the receivers would receive substantially faster service because of ability to stop off cars en route.

In addition to the advantages discussed, there are increased diversion privileges and other advantages which would accrue to shippers and receivers under unification. The enlarged diversion privileges are of special significance to some 39 shippers who evidence support of the applications. In a number of situations there is evidence that the advantages of better car supply and expedited service in connection with transit and diversion privileges often result in part from creation of new and shorter routes by combining portions of the existing routes of two or more of the applicant railroads.

An Oregon lumber manufacturer (2,500 carloads annually) located on Oregon Trunk has found that the enlarged diversion privileges anticipated are of special significance in that if it sold a car of lumber to a buyer at Omaha and for some reason the carload of lumber was not accepted, it would be faced with considerable limitations on resale of the carload because under the present rates it could not resell the carload in the Chicago territory or to any other point approximately east of the

Mississippi River and north of the Ohio River without paying a combination rate, which would be prohibitive.

A Washington lumber company (3,000 carloads annually) whose problems are similar evidenced the fact that customers frequently turn down a car before it is delivered. That necessarily presents a burdensome problem to the shipper whose area for resale may be limited, but after unification, the rejected Omaha shipment could be diverted to any part east of the Mississippi River and north of the Ohio River without prohibitive penalty.

Unification would broaden diversion privileges throughout the entire system. A Minnesota manufacturer of fertilizers (420 carloads annually) frequently is required to divert or reconsign cars. Since the privileges are limited to single carrier routings for the reason that the carrier wishes to protect its longest haul, diversion or reconsignment to an off-line point means a loss of the lower through rate.

Competition.

General. Competition and the transport competitive balance that exists in the area served by the applicant railroads are two of the most significant aspects of the unification proposal. The evidence, including maps, time-service analysis of traffic statistics, statistical indices and testimony, shows the extent and growth of competitive modes of transportation in the United States over the last two decades, and that railroads have suffered a relative decline in their standing in the total transportation service market. Railroad losses of the total transportation service market to highway carriers (both common and private), water, pipeline, and air carriers has been absolute as well as relative. Additionally, the evidence shows that the growth and development of the competitive stature of these other transport modes in the area served by applicant railroads parallels the growth non-railroad transportation has achieved nationally.

Further, there is in evidence an inventory of every station on the proposed merged system by states served with a description of all other transport modes available

at these stations identifying each railroad, motor carrier and air line, and showing the population at each such station.

Railroad. The location of the lines of applicant railroads limits the competition among them. As previously indicated, each serves a geographical territory that, in most cases, is independent economically of the territory served by other applicant railroads. In the great traffic producing states of North Dakota and Montana particularly, Great Northern and Northern Pacific serve entirely different geographical areas. The tracks of Great Northern and Northern Pacific, as they proceed west, are widely separated. While their lines meet at some common points, the major portion of the main lines of those railroads are separated by hundreds of miles. Between the same major terminals or common points at which their lines meet, many of the freight trains operated by Great Northern and Northern Pacific provide duplicate service on practically the same or similar schedules and often operate with less than full tonnage. The unified company would be able to handle the combined traffic on improved transcontinental schedules by operating fewer trains with heavier loads.

With the proposed unified system station inventory as a base, the evidence shows traffic statistics for 1960 by total system, each railroad, each station classification by railroad commodity group classification, states served, carloadings, revenues and shipping classification. There are a total of 4,479 stations on the lines of the applicant railroads in the 17 states and two Canadian provinces involved. All stations fall into one of the following station classifications: (1) Stations served by two or more consolidation or applicant lines and no other rail lines, (2) station served by two or more consolidation lines and one or more other rail lines, (3) stations served by one consolidation line only, and (4) stations served by one consolidation line and one or more other rail lines. The shipping classifications are: Local originating, local terminating, interline originating and interline terminating. Bridge traffic is excluded. At those 4,479 stations, the five applicant railroads handled in 1960, 3,538,267

cars, 148,292,605 tons (or 83.65 percent of all tons handled by applicants) and produced revenues of $585,672,072. Bridge traffic which neither originated nor terminated on any line of applicants, and which constituted 16.35 percent of the total tons handled by them is not reflected in this data. During the same year, each of the consolidated lines handled the following percentages of bridge traffic: Burlington 17.48 percent, Great Northern 12.15 percent, Northern Pacific 15.40 percent, and SP&S 37.16 percent. Pacific Coast had no bridge traffic. If bridge traffic were included, the percentages of total traffic handled in 1960 at the stations where there will be a reduction in the number of rail carriers would be smaller than the figures subsequently shown.

At 4,102 of those stations, or 91.58 percent of the total, there will be no change in the number of railroads serving the point following unification. At those stations, rail service is provided either exclusively by one applicant railroad (class 3—the largest group—3,397 stations, or 75.84 percent of the total), or by two or more railroads including only one of applicant railroads (class 4—the second largest group—705 stations, or 15.74 percent of the total). The class 3 and 4 stations in 1960 originated or terminated 74.91 percent (2,650,633) of the total cars originated or terminated and 78.64 percent (116,631,707) of the total tons, and accounted for 68.59 percent ($471,043,614) of the total revenues reported by all stations on the applicant railroads. For the bulk of the total traffic, the proposed consolidation will not result in any change in the number of railroads serving the stations at which such traffic originates or terminates.

The next to the smallest group of stations—class 2—(those presently served by two or more applicant railroads and by one or more other railroads) comprise 236 stations or 5.27 percent of the total. Of those, 30 are on the line of Midland, the jointly owned subsidiary of Great Northern and Northern Pacific. The remainder of the 236 stations are located in a total of eight states and many are located in such major terminal areas as Minneapolis, St. Paul, Superior, Duluth, Seattle, Spokane, Tacoma, and Portland. The class 2 stations originated or

terminated 20.89 percent (780,046) of the total cars, 17.75 percent (26,313,360) of the total tons, and accounted for 26.9 percent ($184,691,320) of the total revenues. From the foregoing, it will be seen that 96.85 percent of the total stations served by the applicant railroads either will continue unchanged as to the number of railroads or will continue to be served by two or more railroads.

The remainder of the stations—141,[29] or 3.15 percent of the total, are in the smallest group—class 1, and involve points which are located on the lines of applicant railroads and served by more than one applicant and by no other railroad. Those stations, which will lose at least one rail line by reason of substitution of the combined lines for the applicant railroads, are located at a total of only 47 communities in the four northern tier of states (Minnesota, North Dakota, Montana and Washington). In 1960, they originated or terminated only 4.2 percent (148,588) of the total cars originated or terminated on the five applicant railroads, 3.61 percent (5,347,538) of the total tons, and accounted for only 4.51 percent ($30,937,138) of the total revenues. At some of the class 1 stations, rail competition is now either nonexistent or is minimized by the fact that there is an end-to-end connection of applicant railroads, so that the relationship of the lines is complementary rather than competitive.

Pasco, the largest Washington community in this small group of 47 communities, has a population of 14,522. While Pasco is now served by Northern Pacific and SP&S, the only competitive traffic between applicant lines at that point is confined to that which moves between Pasco and Spokane. The other Washington points in the group of 47 have a total population of 4,228.

Except for Grand Forks (population 34,451) the ten North Dakota communities in that group of 47 communities have a total population of only 8,321. Grand Forks is served by Great Northern and Northern Pacific.

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[29] Located 51 in Minnesota, or 8.54 percent of applicants' Minnesota stations, 34 in Montana, or 5.93 percent of applicants' Montana stations, 20 in North Dakota, or 3.66 percent of applicants' North Dakota stations, and 36 in Washington, or 4.09 percent of applicants' Washington stations.

The Minnesota communities in the group of 47 communities range from no recorded population to only four over 10,000, namely Anoka (10,562), Fergus Falls (13,733), Moorhead (22,934) and St. Cloud (33,815).

Turning now to those of the 47 communities in Montana where the largest is Billings (52,851) and two of the others are the adjacent points of East Billings and Laurel (4,601). Helena (20,227) is served exclusively by Northern Pacific and Great Northern, although the former enjoys a decisive competitive advantage since Helena is on its main line whereas it is near the end of a branch line of Great Northern. The other Montana communities in the group of 47 referred to above have a total population of 5,409.

Billings is served by Northern Pacific, Great Northern and Burlington, but the location of the respective lines acts as a physical limitation on competition. All rail shipments between Billings and Denver, Omaha, or Kansas City must move via Burlington. The short route between Billings and Twin Cities is over the lines of Northern Pacific, and the latter's line provides the shorter route between Billings and Butte, although Great Northern also serves Butte. Between Billings and such Montana points as Helena, Missoula, Miles City, Great Falls and all other local points on the lines of Great Northern or Northern Pacific in Montana or other states, the traffic is now non-competitive. Similarly, traffic to or from Billings which is destined to or is to stop for partial loading or unloading at a station local either to Great Northern or Northern Pacific is non-competitive.

Some of the other class 1 stations are on a branch line of one applicant railroad, but on the main line of another applicant railroad, with the result that competition for shipments to and from that point is severely limited. Main line service of one railroad would be preferred by a shipper because of superiority over branch line service of another unless time in transit is unimportant.

Thus, it appears that Great Northern enjoys a decisive advantage over Northern Pacific at such class 1 points as Leeds, Rockford (N. Dak.) and Morris (Minn.) while Northern Pacific enjoys a similar advantage over

Great Northern at class 1 points such as Helena and Wadena. At some of the class 2 stations the same factors exist since at such points at present there is either no competition between applicant railroads, or the competition is of a limited nature. Sioux City, served by Great Northern from the north and by Burlington from the south, provides no opportunity for the two lines to solicit the same traffic. At Portland and Vancouver, no competition exists between the Northern Lines and SP&S because the latter cannot participate in northbound traffic, and the two Northern Lines voluntarily give SP&S westbound and eastbound cars routed over their lines for handling to Portland and Spokane or Portland and Pasco. At Twin Cities, Burlington (in that area its stations are included in class 2 group) operates south and east and thus has no opportunity to solicit at that point tonnage which can move via the two Northern Lines which operate to the west and north.

Class 2 stations and class 4 stations will continue to have at least two competitive rail lines. These two classes of stations now account for 21.0 percent of the carloadings, 48.5 percent of the tonnage, and 58.4 percent of the revenues. Railroad service at those stations would be affected only to the extent that applicant lines would be substituted for by the consolidated company. That would not reduce railroad competition, however, since at least one competing rail carrier would continue to serve each station. To the extent that increased service, faster schedules, better car supply, and other shipper serving elements are made available to the shippers at those stations, competing lines may suffer traffic losses, unless they reciprocate. This is particularly possible in the case of class 4 stations, which are only served by one applicant line at present. Extensions of single line haul as well as attendant shipper services can divert traffic to the merged line.

Additionally, the Northern Pacific line is the most important merger partner at class 2 stations and the second most important at class 4 stations. Traffic at those stations and competing rail lines there will be most affected. Burlington is the most important rail line at class 4 sta-

tions. Because of its present status as a virtually wholly owned subsidiary of Great Northern and Northern Pacific, the practicality that coordination will have extended diversion potential to its limits, mitigates the importance of this factor.

At all of the 4,479 stations of applicants, other than the 141 stations (class 1-3.15 percent) located at the 47 communities referred to above, the number of railroads serving the locality will be unchanged except for the 236 stations (class 2—5.27 percent) which will have the services both of the unified company and of another railroad or railroads. At five of the ten major terminals that are served by applicant lines, there will be no reduction in the number of railroads, namely, Chicago, Denver, Kansas City, Omaha, and St. Louis. For the other five, the following number of railroads will continue to provide service: Head-of-the-Lakes 7, Portland 4 (or 3, considering OE part of unified system), Seattle 3, Spokane 3, and Twin Cities 7. These ten terminals [30] with 140 stations (3.1 percent of the total of 4,479) handled 26.1 percent of the carloadings, 21.6 percent of the tonnage, and produced 30.2 percent of the revenues for the proposed unified system, in 1960. In order of importance Seattle (revenues $40.1 million), class 2, is served by two competing railroads, 35 truck lines, 5 bus lines and 12 air lines. Twin Cities revenues ($37.5 million), class 2 is served by eight competing railroads, 78 truck lines, three bus lines and eight air lines. Chicago ($30.8 million revenues), class 4, is served by 32 competing railroads, 294 truck lines, ten bus lines and 20 air lines. Head-of-the-Lakes (Duluth-Superior), class 2 ($27.3 million revenues) is served by five competing railroads, 18 truck lines, four bus lines and two air lines. Portland ($17.6 million revenues), class 2, is served by five competing railroads, 45 truck lines, three bus lines and 11 air lines. Kansas City ($16.9 million revenues), class 4, is served by 12 competing railroads, 77 truck lines, seven bus lines and eight air lines. Spokane ($12.4 million revenues) class 2, is served by three competing railroads,

[30] See attached appendix L-2.

15 truck lines, three bus lines and three air lines. Omaha ($9.4 million revenues), class 4, is served by eight competing railroads, 65 truck lines, three bus lines and five air lines. Denver ($8.1 million revenues), class 4, is served by five competing railroads, 49 truck lines, nine bus lines and eight air lines. St. Louis ($7.2 million revenues), class 4, is served by 20 competing railroads, 167 truck lines, 16 bus lines and 8 air lines.

Thus, at 4,102 stations, or 91.58 percent of all stations there will be no change in the number of railroads serving the point. Of the remaining 377 stations, railroad competition will continue to exist at 236. At only 141, or 3.15 percent of the total, will railroad service be offered exclusively by the consolidated company where it is now provided by two or more applicant railroads.

Moreover, even at this limited group of 141 class 1 stations many factors exist today which reduce the advantages once enjoyed by railroads which exclusively served a community. Traffic which was once termed local or noncompetitive because it originated at or was destined to a station served only by one railroad is now highly competitive due to the growth of other forms of transportation, including truck lines, inland waterways, pipe lines, bus and air lines. At stations where there is only one railroad, competition from other modes is experienced. That competition is significant and is one of the motivating reasons for unification.

Other modes. In appraising the extent of effective competition, consideration must be given to all modes and not be limited solely to that afforded by the railroads. That view was aptly expressed by the Commission in *Norfolk & W. Ry. Co. Merger*, 307 I.C.C. 401 (1959), wherein at page 417 it stated:

> The position of the railroads has deteriorated steadily in recent years with the accelerating transportation revolution. The monopoly status enjoyed by the railroads in the 19th and early 20th centuries has not disappeared completely with the emergence of strong and growing competitors. This is evidenced by the fact that the railroads' share of intercity freight traffic has declined from 67.3 percent in 1945

> to about 45.6 percent in 1958. During the same period, the motor carriers increased their percentage of intercity traffic from 6.5 percent to 21.3 percent. * * *
>
> Then [1925, when an earlier proposal to unify the N&W and the Virginian had been disallowed] the railroads were a virtual monopoly; now they are struggling to exist against mounting competition.
>
> Then there were few roads and no organized intercity motor carriers of consequence; now we have a network of fine intercity highways and a thriving motor carrier industry.
>
> The railroads are also facing constantly increasing competition from inland waterways operators * * * Every indication is that this competition will become more effective.

In the areas served by applicant railroads, transportation competition has vastly increased since 1930 when the then proposed unification of Great Northern, Northern Pacific and SP&S was approved in the *Acquisition Case*, supra.

The evidence shows in great detail the extensive growth of other forms of transportation in the country as a whole as well as in the areas served by the applicant railroads. The national trends are important in assessing the competitive situation. The proportion of the intercity traffic carried by the railroads has decreased from 66 percent in 1946 to 45 percent in 1959. The proportion carried by highway in the same period has risen from 9 percent to 22 percent; that by inland waterways has increased from 13 percent to 15 percent; and by pipeline from 10 percent to 17 percent. Railroads have suffered a reduction in their proportion of all intercity traffic as well as an absolute volume of traffic, while motor carriers have enjoyed a multiplication of their traffic. Significantly, the railroads in 1959 had 10 percent fewer ton miles than they had in 1947. The motor carriers, however, had almost three times as many ton miles in 1959 as in 1947. Traffic by inland waterways increased 34 percent and that by pipelines 116 percent,

while the total of all traffic increased approximately 27 percent. Thus, not only did the total traffic increase, but the traffic of all forms of transportation increased, except the railroads which decreased.

Since the rail rate structure was predicated primarily on the value of the service rendered, that concept could be given primary weight when railroads were the principal intercity traffic transport media. However, with the advent of motor carrier competition the impact of competitive pressures was experienced in areas of heavy and regular movement of freight at relatively high rates —the higher rated traffic. That area was the most vulnerable of the railroads' freight traffic, and the area which would tend to produce the highest gross revenues for the competing motor carriers. As a result, the composition of rail traffic was altered unfavorably by diversion to highway carriers of much of that traffic which had made the greatest contribution to the railroads. In the areas of less profitable business competitive pressures were not as keen, and thus a smaller portion of such business was diverted to highway carriers.

The general rate increase cases since World War II afforded opportunities for competing carriers and stimulated growth of private carriers. Potential and actual diversion of such traffic placed a ceiling upon rail rates and in some cases required a downward adjustment of rates in order to preserve the volume of rail movement. That situation resulted in increases in the operating ratios to an extent that net railway operating income of the principal applicant railroads declined far greater than the volume of the traffic handled by them, shown as follows:

	Net Railway Operating Income	Percent of Decline	Cars	Percent of Decline	Tons	Percent of Decline
			Burlington			
1947	$31,780,908		1,552,552			
1960	$16,632,498	-47.67	1,313,382	-15.41	47,272,863	-16.91
			Great Northern			
1947	$23,815,730		1,214,805		55,596,079	
1960	$18,435,448	-22.59	1,043,269	-14.12	48,059,912	-13.56
			Northern Pacific			
1947	$18,005,493		820,084		29,753,086	
1960	$10,115,540	-43.82	651,429	-20.57	24,621,988	-17.25

There are 248 Class I motor carriers that serve points on the lines of applicant railroads and file annual reports with this Commission. All class 1 stations, being stations served by two or more applicant railroads and no other railroad, and except Reformatory, Minn., are served by one or more truck lines. At the larger of such points there are several truck lines. At Billings there are nine; Pasco, six; Grand Forks, five; Moorhead, eleven; St. Cloud and Fergus Falls, four each; and Anoka, six. Included among those truck lines is a large coast-to-coast motor carrier, the operations of which blanket the area served by applicant railroads.

The growth of these 248 Class I motor carriers in recent years is a significant factor. From 1947 to the latest year available for each line, their operating revenues increased by $1,489,214,000, or 329.64 percent and their ton miles increased by 23,085,155,000 ton miles or 246.57 percent. Their average length of haul had increased to 402.4 miles by 1959. These motor carriers provide competition with applicants and other applicants to an extent undreamed of in earlier days.

Apart from and in addition to the competition of those certificated common carrier lines is the competition from contract carriers and, in particular, from the private and exempt motor carriers. In 1959, for example, the

private and exempt motor carriers handled 86 percent more ton miles than did the common and contract motor carriers together, and the total traffic handled by private and exempt motor carriers has been growing more rapidly than has the traffic of the certificated motor carriers. Competition from the private and exempt highway carriers is a strong force in the territory served by applicant railroads. For example, the range of truck competition on grains into the Twin Cities and the Head-of-the-Lakes now extends to 400-mile hauls, and where loads of grains are used for backhauls, there is no limit as to the length of haul. At the Head-of-the-Lakes the percentage of grains arriving by truck has increased from one percent in 1957 to 22 percent in 1960 and to a higher percentage in the first seven months of 1961. In the thirteen state area served by applicant railroads, total truck registrations in 1959 were 2,554,864, an increase over 1947 of over one million vehicles. The tons of revenue freight transported in intercity freight service by Class I and Class II motor carriers in the northwestern region have increased from less than two million in 1940 to more than 16 million in 1958. In the Rocky Mountain region, the increase was from less than a half a million in 1940 to over 13 million in 1958.

More and better designed interstate highways are under construction in the area served by applicant railroads and the highway competition from private, contract and common motor carriers is likely to intensify. Those new highway systems, described of record, include the new interstate highway No. 90-94 between Chicago and the Twin Cities and Seattle, which will be 241 miles shorter than the present Northern Pacific mileage between Twin Cities and Seattle, and which will permit trucks to reduce travel time between the Twin Cities and Seattle from 60 to 36 hours. They pose a threat of increased competition to applicant railroads.

As regards intercity passenger traffic, both public and private handled by various kinds of transportation, the evidence shows that from 1946 through 1959, the private automobile is the most important of all competing forms of passenger transport, accounting for close to 90

percent of all intercity mileage. Passenger miles of the railroads since 1947 have decreased 52 percent. The most significant factor from the railroad perspective of prospects for the future is the increase in the number of passenger miles of the airlines, which have increased 432 percent for the period 1947-1959. The bus lines, although they have had a decline in passenger traffic, have joined the truck lines in making substantial inroads in mail and express traffic formerly handled by railroads.

Inland waterway transportation provides additional and increasing competition in the area served by applicant railroads. The volume of tonnage so transported has increased more rapidly in the subject area than it has for the nation as a whole. The principal waterways in the central and western part of the nation in the area served by applicant railroads include the channels up the Mississippi River to the Twin Cities, the Illinois waterway between Chicago and a point on the Mississippi River north of St. Louis, the Missouri River from its confluence with the Mississippi River just above St. Louis to Sioux City, and the Columbia River to a point above Pasco. They have offered opportunities for heavy barge movements which have grown substantially. Programs are underway to improve the waterways and to extend barge navigation up the Snake River from the Columbia River to a point above Lewiston, Idaho, and up the Missouri River beyond Sioux City as far as Fort Benton, Mont.

Pipeline competition has also increased far more rapidly in the area served by applicant railroads than it has in the nation as a whole. The miles of pipelines handling petroleum products in the states served by applicant railroads have more than doubled since 1939, to a total of 28,557 miles in 1959. The pipelines now cover all the principal points served by applicant railroads except on the western coastal points, and those points served by water lines. In addition, a greater network of natural gas to the communities served by applicant railroads in competition with and displacing the coal which applicant railroads formerly handled.

Reference has been made to the air lines participation in intercity passenger traffic. A network of scheduled airlines serves the communities located throughout the system lines of applicant railroads. Not only does the record reflect domination by that mode in the long haul passenger field, but also the fact that they and specialized freight airlines are competing with increasing success for the high revenue freight.

It has been shown on this record that the most significant improvements in service are in areas where the comparative superiority of highway carriers has allowed them to attract large volumes of traffic from the railroads. To the extent unification results in the applicant railroads overcoming that superiority, it will obviously affect their competitive position. For example, time in transit is an important condition in determining whether a shipment moves by rail or truck, and by avoiding delays, the ability to make earlier delivery would enable applicant railroads to hold the traffic to the rails. The expanded routing that will be available to shippers, and the increased transit and diversion privileges which will be permitted on those routes, will enable the consolidated lines to meet the motor carrier who has a real advantage on its expeditious service and its ability to handle a lesser volume shipment than the traditional rail carload.

As previously indicated, service by more than one rail carrier will continue after unification to virtually all points where such service now exists. Beyond this, the question cannot be confined to the narrow issue of rail competition alone. Such a perspective is contrary to the circumstances presented by the current transportation market. The record evidences the conclusion unification would not only directly benefit applicants' railroads, but other railroads as well.

Because the extensive growth of highway, barge, pipeline and air carriers has so affected the traffic and revenues of applicant railroads, applicants rely on the potential economies realizable from unification as necessary and required to preserve their financial integrity. At the same time, one of the affirmative benefits of unifica-

tion is that, by virtue of the service benefits and financial stability which will result, applicants will be better able to compete with other modes of transportation and, particularly, with the private and exempt carriers. Applicants view unification of their properties as the only practical means to better compete with other forms of transportation, particularly highway transportation, and thus bring to an end the continued erosion of traffic from the railroads, and thus insure their continuance as important segments in the nation's transportation industry. That such a development is in the public interest has been repeatedly recognized by the Commission in numerous proceedings. Compare *Louisville & N.R. Co. Merger*, 295 I.C.C. 457, 504 (1957, and *Chicago & N. W. Ry. Co. Purchase, Minneapolis & St. L. Ry. Co.*, 312 I.C.C. 295, 297 (1960).

It is significant to note that applicants' consultants who directed the consolidation studies comprising the Wyer Report previously described have assigned no specific dollar value to traffic gains from other modes of carriage because the trend of the railroads' participation in intercity traffic has been downward, and before any realization of increased traffic from highway transportation can be obtained, applicants must reverse the downward trend; and that benefits in service will be a powerful factor in reversing the trend and enabling the consolidated company to at least maintain its place.

With a few exceptions, all points now served by more than one railroad will, under the proposed unification, continue to be served by more than one railroad. Moreover, highway, water, pipeline and air competition, which has over the years expanded with great impetus, will continue to be effective. While applicant railroads will no longer be competing among themselves, unification of the subject properties, as herein modified, will not substantially reduce transportation competition, nor will it create or tend to create a monopoly of the transportation service in the area served by applicant railroads. The evidence adduced warrants the conclusion that the unification on the basis of the terms and conditions recommended herein will affirmatively promote such competi-

tion by placing New Company as the consolidated company in a stronger competitive position in relation to the other modes of transportation.

Stock exchange consideration.

The stock exchange terms agreed upon by applicants provide for issuance by New Company of specified shares of its preferred and common stock as required by the terms of the Northern Lines merger agreement and the Burlington merger agreement, and such additional shares as may be required to be issued under restricted stock options of Great Northern and Northern Pacific outstanding at effective date of Northern Lines merger.

The number of publicly held shares of Great Northern, Northern Pacific and Burlington outstanding on December 31, 1960 (excluding a few shares reserved for conversion of fractional scrip outstanding), the exchange ratios applicable to each group, and the number of shares of stock of New Company issuable in exchange are as follows:

	Outstanding publicly held shares	New Company shares			
		Exchange ratio		Total	
		Preferred	Common	Preferred	Common
Great Northern	6,079,622	½ sh.	1 sh.	3,039,811	6,079,622
Northern Pacific	5,989,529	—	1 sh.	—	5,989,529
Burlington	48,033	—	3¼ sh.	—	156,107
	12,117,184			3,039,811	12,335,258

The shares outstanding of SP&S would remain undisturbed. All other outstanding shares of stock of applicants would be cancelled. The relative rights and preferences of the preferred and common stocks of New Company proposed to be issued have been described.

Numerous factors were considered by the respective consolidation committees in the extensive and complex negotiation which took place prior to agreement of terms of exchange. They were guided not only by the hard practicalities of business relationships, but by analysis

of detailed studies of the operations, properties, and finances of the subject railroads, and the recommendations of their consultants and financial advisors, and by pronouncements of the Commission and the courts in similar proceedings.

The agreed ratio of exchange of the stock of Great Northern, Northern Pacific, and Burlington for the stock of New Company is predicated on consideration of numerous factors reflecting the contributions by each of the railroad applicants to the financial stability of the New Company, and the active arms-length bargaining which ensued over an extensive period. Discussion of those facts and factors which contributed to the conclusion reached is necessary in the appraisal of the efforts leading up to the agreement on the ratio of exchange.

Negotiations and arms-length bargaining. Negotiations looking toward merger of Great Northern and Northern Pacific originated in 1955 in informal discussions previously mentioned. Subsequent events lead to organization of the separate and joint consolidation committees and their employment of economic consultants, financial advisors and appraisers for recommendations and evaluations of properties looking to unification of the properties. Throughout the exploratory discussions pending completion of the basic studies culminating in the Wyer Report, the negotiators recognized that the major difficulty in arriving at fair and equitable terms would be problems arising out of Northern Pacific's natural resources properties, and for that reason employed financial advisors and appraisers to evaluate the properties.

Following receipt by the joint consolidation committee of Wyer report, the reports by Pishny and Atkinson and Schultz & Company were next received by Great Northern. Pishny and Atkinson in its report dated October 11, 1957, estimated that as of September 1, 1959, the fair value of the Northern Pacific oil and gas properties to be $46,845,435, on the basis of a sale. Schultz & Company estimated the value of the Northern Pacific timber resources, exclusive of grazing and cultivation lands to be $45,114,000, and the estimated value of such lands

at $4,540,000. The reports (as of January 1, 1958) by DeGolyer and MacNaughton (dated March 29, and April 23, 1958) and Mason, Bruce and Girard dated March 3, 1958, as revised April 2, 1958, were later received, by Northern Pacific. DeGolyer and MacNaughton estimated the net worth of the oil and gas properties as a going concern as of January 1, 1958, to be $59,425,137, but indicated it was substantially in excess of the price for which the properties would sell in a theoretical fair market value transaction which presumes a sale of the assets. Mason, Bruce and Girard estimated the value of the timber resources as of January 1, 1958, to be $62,-187,919, with a potential value of $79,668,352 on the basis of improved management to obtain maximum recovery on a sustained yield basis.

In addition, Northern Pacific, utilizing its own technical staff, made an appraisal of its "Land Grant Lands, Coal and Iron Ore Properties and Industrial Lands and Buildings" and estimated the value of its iron ore, taconite, coal, and other minerals, and its grazing and cultivation lands to be approximately $48,700,000, and together with leased industrial lands and buildings and unleased industrial lands to be approximately $81,405,-000, which, together with the estimated value of the other natural resources properties approximated $170,-000,000. That figure was considered by Northern Pacific officials to be much in excess of what the properties would sell for, and they noted that if sold, a substantial part of the proceeds would be taxable as capital gains. Copies of all the valuation reports were exchanged between Great Northern and Northern Pacific.

The First Boston Corporation report to Great Northern, which was a statistical and accounting comparison of Great Northern and Northern Pacific as railroads for the ten years 1947-1956, was completed in December 1957, and included analysis and comparison of many aspects of the railroad properties of Great Northern and Northern Pacific including, among others, the properties, earnings, operations, market prices and yields, and some statistics of other western railroads. Shortly thereafter, it examined the Wyer Report of estimated merger sav-

ings, as well as the Pishny and Atkinson and Schultz & Company reports to Great Northern with respect to the oil and timber properties of Northern Pacific. The data contained in those reports were correlated with an updating of its original statistical study and it presented to the management of Great Northern various methods of determining reasonable ratios of exchange based on combinations of all the figures. It ascertained that, after excluding income from land operations and considering only earnings from railroad operations and common sources, such as the Burlington and SP&S, Great Northern contributed 65.6 percent of the combined earning power and Northern Pacific 34.4 percent in the five years 1952-1956. The figure was rounded off to a ratio of 66 percent and 34 percent, respectively, after the accounts of the two companies were placed on a comparable basis.

By July 1958, appraisals and reports from all consultants, except Morgan Stanley & Co., had been received and exchanged. In the spring of 1959, Morgan Stanley & Co. after studying the earlier reports furnished two reports for Northern Pacific, one concerning railroad operations and the other non-railroad properties, including industrial properties.

In considering the relative values of the railroad properties, Morgan Stanley & Co. compared the income figures of Great Northern and Northern Pacific, eliminated the Burlington dividends and SP&S interest paid to the two parent companies, then added to the figures of each its portion of the income figures of Burlington and SP&S. Great weight was given the adjusted income figures because they reflected the interest of each of the Northern Lines in the entire business and earning power of Burlington and SP&S rather than just the dividends and interest received from the subsidiaries.

On the basis of their studies of the railroad operations and properties, treating the industrial properties of Northern Pacific valued at $32,700,000, as not part of its railroad properties, Morgan Stanley & Co. arrived at a ratio of 60 percent for Great Northern and 40 percent for Northern Pacific.

In arriving at their recommendations, Morgan Stanley & Co. considered that earning power and those factors that bear upon the quality of earnings should be the primary, but not the only, basis for determining values for use in an exchange ratio. Other factors considered were the size and characteristics of the property, the composition and volume of revenues, the investment in transportation property, including levels of maintenance and fixed obligations including interest rates, ratings and repayment provisions. In addition, they carefully reviewed the various ratios of performance, financial strength including levels of current assets, levels of capital expenditures and cash flow generated, capitalization ratios, book value, and characteristics and levels of the market for common stocks and recent trends in earnings.

In addition to the railroad properties and investments, Morgan Stanley & Co. studied the available material on the non-railroad properties and operations, including industrial properties and natural resources, of Northern Pacific and the reports of the various consultants, and the properties on a capitalization of earnings basis in order to reflect the combination of values that they believed would be appropriate therefor. Among the factors considered in those studies were the company policy of Northern Pacific in reinvesting earnings from such properties, development of other companies in the areas, discounted present values of estimated future earnings, price levels of common stocks in the public market of comparable operations, and the method used in reporting income from those properties, such as property taxes, fixed charges, overhead costs and percentage depletion.

After considering the reports of the oil, gas, timber consultants and after using various methods of valuation and taking into account taxes and depletion, Morgan Stanley & Co. arrived at a judgment figure of $115 million to $125 million as the value on the non-rail properties, including industrial properties, of Northern Pacific to the consolidated company. Morgan Stanley & Co. first recommended to Northern Pacific in May 1959, that on the basis of studies unless a minimum of approximately a share-for-share exchange could be arranged, it

would be more advantageous for Northern Pacific stockholders not to merge. On May 27, 1959, at a meeting of the joint consolidation committee, the president of Northern Pacific indicated he considered that the Morgan Stanley & Co. report allowed a wholly inadequate amount for Northern Pacific's natural resources properties and that he had reservations even as to the basis of exchange so recommended. However, it was later agreed by all parties to the negotiations that the industrial properties of Northern Pacific should be included as part of its railroad properties since Great Northern possessed properties of similar character, used as part of its railroad operations. However, the Morgan Stanley & Co. recommendation was finally concurred in by the Northern Pacific committee. The Great Northern committee, however, was convinced that the demonstrated *earning power* of Northern Pacific from *all sources* would not warrant better than five-sixths of a share for each Northern Pacific share to one share for each Great Northern share, or, if Northern Pacific received a full share, then Great Northern should receive one and one-fifth shares.

Following the initial recommendation of Morgan Stanley & Co. of a minimum share-for-share exchange which was concurred in by the Northern Pacific consolidation committee but disputed by the Great Northern consolidation committee firm in the conviction that the demontrated earning power of Northern Pacific would not warrant better than a share for Northern Pacific and one and one-fifth for Great Northern, Great Northern concluded that, as tested by accepted yardsticks of value, its railroad properties were superior to those of Northern Pacific, and that the natural resources of Northern Pacific should be recognized in any exchange *only on the basis of their contribution to earnings.* Northern Pacific's position was that a ratio based on average railroad earnings for a five-year period failed to give recognition to the improvement of its earnings in the more recent years, and that a capitalization of the earnings from natural resources failed to give recognition to the potential future earnings of those properties or their actual current values.

It seems agreed by all parties, active in negotiating the present merger terms, that the chief difficulty in such negotiations was the method of treatment, (whether or not to include them in merger) and the valuation of the natural resources properties of Northern Pacific.

In the belief that the differences with respect to the relative values of the railroad properties of the two companies could be resolved if they alone were involved, the possibilities of segregating Northern Pacific natural recoures and negotiating on the basis of the railroad properties alone were then explored. One course of action considered was to issue two classes of stock, one class to participate only in rail earnings and to be divided among Great Northern and Northern Pacific stockholders on the basis of relative railroad values, and the other class to participate in natural resources earnings only and to be distributed solely to Northern Pacific stockholders. That view was unacceptable to the Great Northern committee and was not favored by some of the Northern Pacific committee because of the difficult position in which it would place the board of directors of the consolidated company in administering the two classes of property, each with stockholders having divergent interests.

Investigation was also made of the possibility of spin-off by Northern Pacific of the natural resources properties prior to consolidation, but it was found that such a spin-off free of Northern Pacific's prior lien and general lien mortgages, to which they are subject, would be opposed by the trustees of the mortgages and bondholders, would involve Northern Pacific in litigation and probably could not be successfully consummated, and that to have a spin-off subject to the mortgages was not practicable or desirable because of tax consequences and other reasons. It was concluded that Northern Pacific's rail and non-rail properties would have to be included as a package in any negotiations and agreement made, if at all.

First Boston Corporation representatives analyzed and discussed with the officers and Great Northern consolidation committee the alternative suggestions presented by Northern Pacific with the advice of its financial advisor,

Morgan Stanley & Co. At the request of both railroads, both financial advisors held numerous conferences in order to seek agreement on figures which each would recommend to its principal as a basis for further negotiation.

On May 27, 1959, at a meeting of the joint consolidation committee, it was suggested that First Boston Corporation and Morgan Stanley & Co. further explore the matter to determine whether agreement could be reached by them as a basis for recommending relative values of the two properties strictly as railroads. On October 28 and 29, 1959, the presidents of the two Northern Lines met with representatives of the two financial advisor firms and discussed the reasons for the difference between the 60-40 ratio proposed by Morgan Stanley & Co. and the 66-34 ratio proposed by First Boston Corporation. It developed that the difference was primarily the result of differences in the treatment of Burlington and SP&S earnings, the treatment of federal income taxes, and the weight to be given certain intangible factors having to do with the alleged superiority of Great Northern's operating ratios, price-earnings-ratio, coverage of fixed charges, operating advantages and other matters.

A number of proposals were advanced by Great Northern in an effort to reconcile differences, including issuance of common stock to Northern Pacific stockholders and preferred stock to Great Northern stockholders which would guarantee them their current dividends and be convertible at any time into common stock share for share. There was also considered a proposal to issue one and one-fifth shares of the New Company stock for each share of Great Northern stock and one share for each share of Northern Pacific, with the provision that when the earnings of the New Company exceeded an agreed figure, the shares issued to Northern Pacific stockholders would automatically be increased in the ratio of six for five. Those and other proposals contemplated that at the outset the greater earning power of Great Northern should be recognized and that equality between the stockholders of the two companies should be achieved only upon the attainment in the future of

some predetermined level in earnings. While the differences could not then be resolved by any of the proposals, it was recognized that the areas of disagreement were such as to admit of honest differences of opinion.

However, the meeting with the financial consultants in October 1959 made it clear that if agreement on terms was to be reached and the benefits and advantages of the proposed consolidation were to be obtained by the public and the companies and their stockholders some concessions would have to be made by each. The matter was considered at a meeting of the Northern Pacific consolidation committee on December 10, 1959, and it was unanimously agreed that a slight modification of Northern Pacific's stand for full equality should be made.

In the belief that no agreement could be reached on their recommendation for a share-for-share exchange and considering whether some modification of their recommendation would be in the interests of Northern Pacific stockholders, Morgan Stanley & Co. was influenced by two factors, among others; the increase in net income estimated in the Wyer Report, and the indications that Northern Pacific's income from outside properties had probably reached a temporary peak in 1959 and would tend to level off in the near future. In view of the estimated increase in net income and other benefits anticipated from the proposed consolidation, they concluded that the Northern Pacific stockholders would be justified in making some concession, and undertook to work out an exchange ratio which would recognize immediately the somewhat greater earning power, larger dividend payments and historically higher market price of Great Northern stock, and at the same time preserve for Northern Pacific stockholders on a longer term basis an approximately equal participation in the earnings of the combined enterprise.

Significantly, a definitive valuation of either Great Northern or Northern Pacific stock except on the basis of capitalization of earnings, was determined to be difficult if not impossible to make because of the diversity of the assets involved and the fact that neither railroad properties nor the natural resources were readily marketable and are worth only what they earn.

Market prices of the stocks of Great Northern and Northern Pacific were considered as subject to wide fluctuations and not reliable indicia of the total value of all the outstanding capital stock of either company. Neither book investment figures nor depreciated costs were considered as true measures of value. Efforts to arrive at comparative value of the two stocks by separately valuing the natural resources properties of Northern Pacific and developing a ratio of Northern Pacific stock without those properties to Great Northern stock proved impractical because of inability to agree on the correct ratio and because of the difficulty of arriving at a valuation of the natural resources properties which could be regarded as fair to both sets of stockholders in view of changing price levels, costs and market conditions and uncertainty as to the future potential of the lands in question. Thus, no definitive value of the natural resources properties was made by either Northern Pacific or Great Northern, nor was any definitive valuation of Great Northern stock made by either company to which any ratio agreed upon might have been applied.

On June 2, 1960, after numerous discussions and prolonged negotiations, the presidents of the two Northern Lines, with the advice and approval of their financial advisors, finally came to agreement. They agreed to recommend to their respective consolidation committees an exchange on the basis of share-for-share, with Great Northern stockholders receiving in addition the equivalent of $5 per share in the form of one-half share of a $10 par value 5½ percent cumulative preferred stock which would be retired over a period of twenty-five years following the fifth anniversary of the merger through the operation of a mandatory sinking fund and would be redeemable at the option of New Company after the fifth anniversary of the merger date at specified premiums and would be without voting rights, except for certain limited rights in the event dividends thereon should become in arrears in the aggregate amount equal to six quarterly dividends. That basis of exchange was considered by both financial advisors as fair and equitable to both sets of stockholders and was unanimously ap-

proved and recommended to the respective boards of directors by the separate consolidation committees on July 13, 1960.

Morgan Stanley & Co. considered the final merger terms fair and equitable to the stockholders of each of the three railroads and so advised its principal, in that (1) the $5 par value of new preferred stock which would go to each share of Great Northern recognizes the somewhat larger earnings and dividend payments as well as the higher market prices of Great Northern stock over a period of years, and (2) the annual sinking fund of 4 percent commencing at the end of five years is expected to completely retire the preferred stock in thirty years and the Great Northern and Northern Pacific would then share equally in the earnings of the New Company; during the period the preferred stock is outstanding slightly over half the dividend and sinking fund payments on that stock would in effect come from Great Northern stockholders' participation in the earnings of the New Company.

Likewise, First Boston Corporation reviewed and approved the provisions for the proposed 5½ percent preferred stock of New Company allotted to Great Northern stockholders in recognition of the greater earnings, dividends and market prices of Great Northern stock over a period of years, and advised Great Northern that in its judgment the terms were fair to the security holders of Great Northern, Northern Pacific, and Burlington on the basis of historical earnings and dividends, and the exchange ratio was realistic from a market price standpoint as well as an opportunity to share in merger savings; that the proposed unification would be beneficial to the security holders of the participating companies, and create a sound financial structure for the New Company with adequate protection for debt service and dividends; and that the terms provide a satisfactory means of obtaining capital funds, if required in the years ahead. In its analysis First Boston Corporation considered that only modest weight should be given to book value and physical plant, but that such areas could not be dismissed because they provide a basis for future po-

tential earning power in a regulated industry, and that while it gave weight to the historical earnings of the railroad properties of Great Northern and Northern Pacific it evaluated the latter's natural resources properties on the basis of their prevailing and prospective rate of income. It thought the natural resources properties income should be given a weight of about 1½ to 1 for the railroad. Thus, 150% of recent past earnings appears to be a more realistic basis than the speculation or pretense that the future would bring untold earnings although obviously no one knows when or how much they would be.

Realizing that statistical procedures alone couldn't determine a basis for any exchange of stocks in a merger that would be fair and equitable to the stockholders, its conclusion was essentially a judgment in giving proper relative weight to the factors which it considered relevant, whether quantitative, qualitative, or intangible, including mileage owned and operated, operating revenues and expenses, earnings, transportation efficiency, trends in traffic and earning power, assets, dividends, financial position and working capital, the extent of funding under Great Northern's pension plan, non-carrier properties, including oil and other mineral rights and properties, and timber lands of Northern Pacific, the market prices of the stocks of the two companies, and the effect of the estimated merger savings, and that on the basis of all of the factors considered plus the prospect of the unification savings, it considered the terms just and reasonable to the stockholders of Great Northern, Northern Pacific, and Burlington. A short time later, the boards of directors of Northern Pacific (on July 14, 1960) and Great Northern (on July 15, 1960) approved the terms of exchange recommended by the consolidation committees and authorized the execution of a preliminary agreement for merger of the properties of Northern Pacific and Great Northern and Pacific Coast and for the unification thereof with the properties of Burlington and SP&S for operation as a single integrated system.

The preliminary agreement of merger entered into by Great Northern and Northern Pacific in July 1960, left

a number of questions to be resolved before a definitive merger agreement could be finalized. The principal question dealt with the manner by which Burlington would be included in the unification, because of provisions in the principal mortgage vehicles of Great Northern and Northern Pacific dealing with liens. That question was ultimately decided in the proposal to establish the system-wide consolidated mortgage, inter alia, details of which are discussed elsewhere herein.

The record clearly establishes that in the merger negotiations and in particular in connection with the ratios of exchange of stock in connection with the described merger agreements each dealt with the other as representatives of independent solvent corporations, and that agreement therein, including the described exchange ratios, was arrived at by arm's length bargaining which occurred over a five-year period with origins in the discussions which began informally in 1955 and culminated in agreement in 1960.

In its brief, intervener, N P Stockholders Committee assert that the present merger terms were negotiated by persons well and long known to one another and were not the result of arms-length bargaining. Detailed review of the record reflects the contrary. True, the presidents of Great Northern and Northern Pacific were well known to one another and participated jointly or attentively in several common projects in which the companies they head hold a substantial interest. But the long, detailed and exhaustive negotiations, covering every conceivable aspect of the problem by those able and experienced individuals extending over a period of five years reflects the strongest dealing at arm's length, each concerned with representation of his company and its stockholders, in obtaining the highest possible values for those in which he had a concerned responsibility in the negotiations. Intervener's contention is without merit.

Stockholders' contributions to the unified system. The relative treatment of Northern Pacific and Great Northern stocks provided in the Northern Lines merger agreement was clearly a compromise of the differences of opinion that existed between the Great Northern con-

solidation committee and the Northern Pacific consolidation committee as to the relative values of capital stock of the two companies. While it represents concession by each to the views of the other, it was considered by the financial advisors and the respective board of directors be fair to both the stockholders of Great Northern and the stockholders of Northern Pacific, and was thus approved by vote of the stockholders as subsequently indicated.

A definitive valuation of either Northern Pacific or Great Northern stock, except on the basis of capitalization of earnings was found to be difficult if not impossible to make because of the diversity of assets involved and the fact that neither the railroad properties nor the natural resources properties were readily marketable, and are worth only what they can earn. Since market prices of the stocks of the two Northern Lines are subject to wide fluctuations and are not reliable indicia of the total value of all the outstanding capital stock of either company, and that neither book investment data nor depreciated cost are true measures of value for that purpose, the attempt to arrive at comparative values of the two stocks by separately valuing the natural resources properties of Northern Pacific and developing a ratio of Northern Pacific stock to Great Northern stock without those properties proved impractical for several reasons. Those were: (1) inability to agree on the correct ratio, and (2) difficulties of arriving at a valuation of the natural resources properties which could be regarded as fair to both sets of stockholders in view of changing price levels, costs, and market conditions, and uncertainty as to future potential of the lands in question. Thus, no definitive valuation of the Northern Pacific natural resources properties was made by either Great Northern or Northern Pacific, nor was any definitive value of Great Northern stock made by either company to which any ratio agreed upon might be applied.

In the final analysis, determination of a fair and equitable exchange ratio had to be a matter of judgment based on a consideration of all factors, including a realistic appraisal of what terms would be necessary to bring

about acceptance by both sets of stockholders. Consideration was given to Northern Pacific's natural resources properties as well as to other conceivable aspects of the properties, assets, earnings, operations, and finances of the two companies. There were five significant factors leading to the conclusion reached. First, past earnings experience and available information upon which to forecast probable future earnings showed Great Northern stock worth more than Northern Pacific stock. During the period 1955-1959, inclusive, Great Northern's net income after fixed charges and other deductions had averaged $29,016,596 annually, compared with $21,409,251 for Northern Pacific. 1959 was the year of the steel strike when Great Northern's iron ore tonnage was the lowest of any year since 1939. Even in 1960, when income from natural resources cushioned the effect of depression on Northern Pacific's earnings, Great Northern's net income exceed Northern Pacific's by $12,176,020.

Second, there is nothing reasonably foreseeable to indicate that Northern Pacific's future earnings prospects are better than Great Northern's. The decline of direct ore shipping on the Mesabi Range and the development of taconite, together with the competition of South American and Labrador iron ores entering the country through the St. Lawrence Seaway, point to a shrinking iron ore movement over the Great Northern in the future; but iron ore tonnage contributed only 8.1 percent of Great Northern's total operating revenues in 1960. Withdrawal of Northern Pacific's oil and gas reserves at a faster rate than replaced by new discoveries indicates that Northern Pacific's income from natural resources reached a peak in 1959, and that over foreseeable future a leveling off or possibly a decline of those earnings may be expected.

Third, both railroads face increased competition from possible further losses of traffic to other modes of transportation. In competing traffic, Great Northern is better equipped to maintain its position than Northern Pacific. Its transcontinental freight route is 122 miles shorter than Northern Pacific's and it has lower grades and less curvature, with a smaller number of crew

changes and lower operating and transportation ratios and, greater importance, the ability to make faster time on that route than can be made over the route of the Northern Pacific. The disadvantage of the Northern Pacific's longer route would be intensified upon completion of the toll-free interstate highway No. 90-94 between the Twin Cities and Puget Sound terminals—241 miles shorter than Northern Pacific's main line between those points and 119 miles shorter than Great Northern's. The freeway would provide a fast, economical transcontinental truck route serving the terminals and most of the cities along Northern Pacific's main line, and thus the proposed merger is perhaps more urgently needed in the interests of Northern Pacific stockholders than in the interests of Great Northern stockholders.

Fourth, Northern Pacific and Great Northern have nearly the same number of shares of capital stock outstanding. Because of Great Northern's better earnings, it has paid higher dividends per share over the past ten years than have been paid on Northern Pacific stock, and market prices of Great Northern stock were, until recent months, consistently higher than market prices of Northern Pacific's stock. Great Northern's dividend rate has been $3 per share since 1956, while Northern Pacific's current dividend rate is $2.20 per share and in years prior to 1959 even lower dividends were paid. For the 17-month period from January 1, 1959, through May, 1960, the average monthly mean market price of Great Northern stock exceeded that of Northern Pacific stock by $4 per share.

Fifth, because of Great Northern's consistently higher earnings per share, merger of Northern Pacific and Great Northern at any time in the past ten years on basis of share-for-share exchange of stocks would have resulted in earnings per share of New Company stock lower than the amount actually earned on Great Northern stock and higher than the amount actually earned on Northern Pacific stock. Northern Pacific stockholders would thus have gained at the expense of Great Northern stockholders on a strict share-for-share exchange, and unless a substantial increase in Northern

Pacific earnings in relation to Great Northern's could be predicated, it would appear to be the result of such an exchange in the future. No merger terms which wholly ignored these circumstances could realistically be expected to appeal to Great Northern stockholders as fair and equitable.

Upon such considerations, it was the conclusion of the consolidation committees and of the financial advisors that Great Northern's stockholders were entitled to and should receive somewhat better than a share-for-share exchange.

The facts indicate that the terms agreed upon squarely met the problem. The dividend of 27½ cents per share to be paid on each half share of preferred stock of New Company would come from earnings of the unified company contributed in greater part by Great Northern. A comparison of Northern Pacific and Great Northern earnings per share, adjusted to include their respective proportionate interests in the entire net increase of Burlington and SP&S, with a proforma consolidation of earnings of the constituent companies for 1959 and prior years, shows that the earnings per share of common stock of New Company, after payment of dividend on the preferred stock would have been greater in every year than such adjusted earnings per share on Northern Pacific stock but substantially less than such adjusted earnings per share on Great Northern stock. On the basis of past earnings experience, the merger terms slightly favor Northern Pacific stockholders while preserving to Great Northern stockholders the higher dividends justified by the most recent difference in per share earnings.

The use of a non-voting, callable preferred stock, with a mandatory sinking fund would give current but limited recognition to the higher earning power of Great Northern over a long period of years, yet consider the potential in the years ahead of Northern Pacific's non-carrier properties, cognizant that slightly more than half the dividends in the preferred stock and funds for its retirement would come from Great Northern's earning power.

The preferred stock gives temporary acknowledgment of the higher earning power of Great Northern, but, on a larger time basis assures the Northern Pacific stockholder equal participation in the earnings of the combined enterprise, among other things. As the preferred stock is retired by the sinking fund, or by call, the share of the net income available to former Northern Pacific stockholders would progressively increase until equality is achieved.

As indicated, the conversion of the publicly held shares of capital stock of Burlington (48,033 shares of the 1,708,391 outstanding shares, remainder owned in equal amounts by Great Northern and Northern Pacific) into capital stock of New Company, under terms of the Burlington merger agreement would be 3½ shares of the common stock of New Company for each share of the stock of Burlington. Upon consummation of the Burlington merger, no new securities would be issued in respect of the Burlington stock held by Great Northern and Northern Pacific, but all such shares and any treasury shares held by Burlington would be returned and cancelled.

The treatment provided in the Burlington merger agreement in respect of conversion of the publicly held shares was jointly recommended by the financial advisors of Great Northern and Northern Pacific upon consideration of data developed in their respective studies made for the two Northern Lines, and was discussed with and approved by the principal holders of such Burlington stock, and by the boards of directors of Great Northern, Northern Pacific and Burlington as fair and equitable.

That the agreed exchange ratios are considered fair and equitable to the stockholders of the three companies is supported by the votes of the stockholders when the merger agreements were submitted to them for approval at annual meeting in 1961. In compliance with the provisions of section 5(II) of the Act, the applicants, in accordance with applicable state statutes, obtained the necessary security holders' approval for the unification program here involved. The results of voting on the proposals by the stockholders at the stockholders' meetings held in 1961 were as follows:

	For		Against	
	Shares	Percent	Shares	Percent
Great Northern	4,929,931	81.03	10,491	0.17
Northern Pacific	4,422,640	73.81	397,949	6.64
Burlington	1,700,403	99.9	310	0.02

In a number of prior proceedings, the Commission has enumerated the various factors by which contribution of each group of stockholders to a unified system can be measured. Those most commonly mentioned are earnings, dividends, market prices, and book values of their shares. In *Erie R. Co.—Merger—Delaware L. & W. R. Co.*, 312 I.C.C. 185, the Commission stated, at page 188:

> A more important element, however, in determining the reasonableness of the terms is the comparative earning power of the two carriers in relation to the shares of stock outstanding.

While considering all other recognized elements of value, applicants placed great emphasis on the historical and prospective earnings of the companies involved, and tabulations of data reflecting aggregate net income, net income per share for 10 years to 1960 as well as high and low market quotations by quarters 1959, 1960 and January 1-March 14, 1961, were furnished stockholders in the proxy statements of Northern Pacific and Great Northern.

Applicants have accepted the best judgment of experienced men acting at arm's length as to the relative contributions of the three groups of stockholders. In so doing, it is clear that they were neither bound by mathematical formula, nor by any single element of value to the exclusion of others, but, as indicated, they concluded that the most important factor was the test of earnings.

INTERVENERS

Those interveners who were permitted to intervene and enter their appearance at and participated in the hearings comprise some 50 separate interests, and fall into four categories: (1) Those who support unification

as proposed by the applicants, (2) those who support the unification with conditions, (3) those primarily or exclusively in support of conditions, but not opposed to unification as such, and (4) those opposed to unification. Some who seek conditions express opposition to unification, but if their requested conditions are imposed, either support the unification or have no other interest in the matter. As previously indicated, many of those shippers and other supporting witnesses had petitioned to intervene, but their participation was as applicants' witnesses, and that evidence has been discussed. Other supporting interveners directly participated in the proceedings and presented their evidence and arguments, and their interests, as well as the interests of other interveners will be discussed.

In connection with the discussion just previous dealing with stock exchange ratio an intervener, NP stockholders Committee, takes no position with respect to the unification proposed, but seeks special conditions, as subsequently discussed.

Intervening Stockholders.

NP Stockholders Committee. The stock exchange ratios have been seriously questioned only by intervener NP Stockholders Committee, and then not as to the good faith of the negotiators but on the ground that the stockholders have not been fairly treated in regard to Northern Pacific's natural resources properties. The NP Stockholders Committee asserts it intervened for the purpose of protecting the interests of stockholders in Northern Pacific in the proceeding and in any legal actions relating thereto or arising therefrom. The record shows it was organized in August 1961, and that as of April 2, 1962, having solicited 5,072 stockholders (out of over 32,000) it received authorization from 1,021 owning 322,557 shares (including approximately 200,000 shares owned by clients of a committee member's firm), representing about three percent of the stockholders and about 5.4 percent of the outstanding shares of Northern Pacific.

Intervener's objections to the exchange ratios and the transactions are directed to two points: (1) the shares allotted to the Northern Pacific stockholders do not reflect the full potential value of the natural resources properties, and (2) the economic benefits of the natural resources properties should be preserved exclusively for the Northern Pacific stockholders. It contends that approval of the present merger terms by Northern Pacific stockholders was obtained by Northern Pacific management only after a calculated suppression of appraisals of its natural resources properties, that the present merger terms are unjust to Northern Pacific stockholders, and that the Commission, as a condition to its approval of any merger, should impose the conditions requested by NP Stockholders Committee, as set forth in appendix M.

Intervener argues that the data contained in those various appraisal reports dealing with natural resources properties were relevant, valuable and essential to aid Northern Pacific stockholders in judging the fairness of the proposed merger terms, that denial to the stockholders of those reports and the valuation data contained therein was part of a calculated strategy of Northern Pacific management, evidently deemed needed to obtain stockholder approval of the present merger terms, and consequently, that weight to be given the affirmative vote of the Northern Pacific stockholders should be seriously questioned. Further, it argues that the conditions it requests are feasible, practical and legal, and would redress the injustice of present merger terms to Northern Pacific stockholders with least interference with consummation of a merger of the railroad properties.

Intervener does not object to merger of the railroad properties of Northern Pacific with Great Northern on the ratio of 60 percent of New Company's common stock to Great Northern and 40 percent to Northern Pacific as a division between them; but it does object to the allotment of preferred stock of New Company to Great Northern. It alleges that more than 50 percent of the Northern Pacific's natural resources, now owned exclusively by the Northern Pacific stockholders will be trans-

ferred by the proposed exchange ratio to the Great Northern stockholders and the minority stockholders of Burlington and that the Northern Pacific stockholders will be required to buy back the lost interest future retirement of the preferred stock. It proposes a cash sale of the natural resources properties, as subsequently discussed, following which the mergers would be effectuated with the natural resources preserved for the exclusive benefit of such of the Northern Pacific stockholders as elect to make an additional investment in the proposed purchaser.

With respect to intervener's complaint that Northern Pacific failed to submit the vaulation of its experts to its stockholders, before vote was taken on the unification program, the record shows Northern Pacific's reasons for not doing so was not only the inherent difficulty in including some but not all of the valuations (upon which little consideration was given) in the proxy statement for the 1961 annual meeting of stockholders of Northern Pacific, the confusion that would have been created in the minds of the stockholders if such voluminous reports had been submitted (although volume should be no barrier), and the unfairness of furnishing them to some but not all of the 32,000 stockholders. This last argument dealt with request by counsel for intervener (as a stockholder) prior to organization of intervener who sought to obtain certain appraisals, and efforts by intervener after its organization to obtain same. As previously indicated, the Northern Pacific proxy statement contained all of the material relating to the production and earnings of the natural resources upon which negotiations were predicated and that would be of value to the stockholders (a copy of which is an exhibit of record). Moreover, it was filed with the Securities and Exchange Commission prior to mailing (about March 24, 1961) to stockholders in compliance with the requirements of rules promulgated under Regulation 14[31] of the General Rules and Regulations issued by that agency pursuant to the Securities Exchange Act of 1934, as amended. The same data was

[31] 17 CFR 240.14

included in the proxy statement of Great Northern for the 1961 annual meeting of its stockholders, also filed with the Securities and Exchange Commission under the previously indicated regulation.

Intervener's argument is predicated on a series of events disclosed by correspondence (copies of which are of record) beginning on August 1, 1960, between its counsel and the president of Northern Pacific, before formal organization of intervener as a representative of a group of stockholders, and related correspondence continuing through October 3, 1961. Following announcement of the merger plan to its stockholders in July, 1960, intervener's counsel's interest (on August 1, 1960) as a stockholder was first evidenced as concern with Northern Pacific's oil and timber properties and value, suggesting a spin-off of those properties prior to merger. Subsequent correspondence reflects Northern Pacific management's reasons for not considering spin-off feasible, counsel's insistence that the timber and mineral properties be retained exclusively in Northern Pacific's stockholders, and that stockholders should have the benefit of the values of those properties, counsel's notification (dated January 31, 1961) of intention to present for action, at the stock-holders' meeting at which merger would be acted upon, a proposal that such natural resources properties be first spun off or otherwise retained in present Northern Pacific stockholders, and requesting the management pursuant to Rule 14A-8, of Regulation 14 of the General Rules and Regulations promulgated under the Securities Exchange Act of 1934, as amended, to include in the proxy solicitation material a statement to that effect. After formation of the intervener committee correspondence reflects its plan to intervene in these proceedings, requesting of Northern Pacific that the appraisals be made available at the hearings, and Northern Pacific's indication that it did not contemplate that such appraisals would be part of its case in chief. Northern Pacific management refused to include committee counsel's proposal and statement in the proxy solicitation material issued in conjunction with its annual meeting held in April 1961, and was sustained in that

position by the Securities and Exchange Commission. In that regard, on brief, intervener indicates that although management was not required by the Securities and Exchange Commission to include in its proxy statement a stockholder's proposal dealing with those natural resources properties it could have voluntarily done so; rather, it opposed the stockholder's proposal before that government agency on the ground that it was opposition to the merger. While intervener's counsel, who was proceeding as a stockholder prior to intervener's organization, was primarily concerned with the part the natural resources properties played in the valuation of assets and ratio of exchange, and could well have engaged in a solicitation effort prior to the annual meeting in question, it appears that he chose to engage in efforts to present it to the stockholders' meeting. Being unsuccessful, the NP Stockholders Committee was subsequently organized and an effort was made through solicitation to obtain support for counsel's proposal. Intervener was unsuccessful in furthering its cause at the 1961 annual meeting of stockholders of Northern Pacific and again by subsequent solicitation of the stockholders (having obtained authorizations from only 5.4 percent of the outstanding shares of Northern Pacific stock, as previously indicated), and it seeks here to show that the stockholders were not provided with adequate data by which to exercise their proxies, or that they were mislead in exercising their proxies which management voted at the 1961 annual meeting of stockholders when the vote of the merger proposals was taken. It appears that intervener's argument has little merit. While its efforts were not successful at the annual meeting, the results of its solicitation efforts indicate that it had little support for its proposal. Moreover, as previously indicated, the subject of spin-off, which it first advocated, was considered in the negotiations as previously discussed. While its later proposal dealing with a land company as subsequently discussed was not so considered in such negotiations, the facts reflecting the circumstances surrounding the negotiations leading up to agreement to merge show the impracticality of the separation of the natural re-

sources properties and that extensive and detailed consideration had been given to the matter with much analysis as the single problem which had to be overcome in arriving at an acceptable ratio of exchange of securities.

While complaining that the valuation of the natural resources properties (which intervener insists was used in arriving at the agreed ratios, although the evidence shows that the part they played was minimal) was too low, it did not submit a definitive valuation of its own. As previously indicated, outside experts employed by Northern Pacific and Great Northern provided estimated valuations of the oil, gas and timber resources of Northern Pacific, and Northern Pacific made its own valuation of its industrial lands. It is significant to note that those valuations and appraisals by outside interests varied as to time and basis and were never brought into harmony. The record shows they were reviewed by the financial advisors and the respective consolidation committees and carefully considered, but that no definitive values were agreed upon for the natural resources properties or the railroad properties.

However, NP Stockholders Committee has assumed to the contrary as part and parcel of its objections and has ignored the clear and unmistakable fact that the earnings from the natural resources properties were included in the total earnings upon which the exchange ratios were predicated. While it produced extensive evidence, including that of several members of its committee and a prominent consulting engineer and geologist who expressed varied opinions dealing with valuations of the natural resources properties, and though dissatisfied with the valuations by applicants, it likewise did not fix a definitive value thereon.

With respect to its allegation that the economic benefits of the natural resources properties should be reserved exclusively for the benefit of Northern Pacific stockholders, the record shows the NP Stockholders Committee was not organized for the purpose of obtaining a change in stock ratios more favorable to Northern Pacific stockholders, but to retain their present exclusive ownership of the natural resources properties by a pro-

posal covered by its requested conditions for separate and concerted exploitation. That proposal was outlined for the first time at the hearings more than 15 months after the application was filed and more than seven months after the hearings began. Intervener's proposal provides for the organization of a land company to purchase the natural resources properties (exclusive of industrial lands) from Northern Pacific for cash to be derived primarily from the sale of land company stock to Northern Pacific stockholders. The suggested purchase price of the natural resources properties was initially $112,309,-430 or such higher price, not in excess of $117 million as the Commission shall determine, all cash. Northern Pacific stockholders would be offered negotiable rights to subscribe for land company stock. Unsubscribed shares would be underwritten by one or more investment houses. All expenses of the plan would be borne by Northern Pacific. The plan would be carried out before any merger of the railroad properties could be accomplished, and the withholding of approval of merger or the conditioning of approval on the accomplishment of such sale is requested.

The price of $112 million sugested by intervener was based upon the $115 million minimum judgment value of Morgan Stanley & Co., for the natural resources properties. While the NP Stockholders Committee chairman considered that value wholly inadequate and the method and principles followed by Morgan Stanley & Co., as fallacious and erroneous, it nevertheless proposes to purchase the natural resources properties at the same value. Such a position on value is hardly credible and obviously would be unfair to the stockholders who for whatever reason did not choose to participate with the land company.

The suggested proposed purchase price was subject to a number of factors. It was first determined by reducing the Morgan Stanley & Co. valuation of the natural resources of $115 million to $96 million by excluding industrial lands, but then increasing the price by some $16 million to cover capital gains tax for the proposed sale, resulting in a net of $112 million. The additional allowance for capital gains tax would also be subject to capital

gains tax of some $4 million, and the total purchase price would be about $117 million to enable Northern Pacific to retain the intended amount of $96 million.

Another member of the intervener committee arrived at a value of $295 million as a minimum consideration for the natural resources properties alone based on comparative market prices of securities. Significantly, the market value of Northern Pacific stock, including the railroad properties, at the time of that testimony was $40 per share, for a total of some $50 million less than that minimum consideration without the railroad properties. A third member offered no valuation, but was concerned with matters of conventional business inflation and monetary inflation and their future effects, but it is clear he was interested only in retaining present exclusive ownership of equity in the natural resources properties favoring some current exploitation of the natural resources properties.

The allegation that Northern Pacific stockholders are required by the merger plans to give up more than 50 percent of their interest in the natural resources properties, and that they would be required to buy back the excess through retirement of the proposed preferred stock of New Company over the years (at an estimated cost of $58 million) to achieve equality with Great Northern stockholders, ignores: (1) the fact that more than half the cost of retiring the preferred stock would be borne by Great Northern stockholders and (2) the fact that intervener's proposal would require Northern Pacific stockholders to buy back by the purchase of land company stock the interest in the natural resources properties which they already own.

Under the intervener's proposal, the present Northern Pacific stockholders would participate only to the extent they are able and willing to pay about $20 per share, all stock not so subscribed to be sold to the public through underwriters. As indicated, during study of the possible plans of merger, applicants gave serious consideration to a tax-free spin-off of the natural resources properties which, if it had been feasible, would have retained them entirely without tax penalty for all Northern Pacific

stockholders. Thus, the proposal of intervener lacks the benefits to the stockholders as a group which might have resulted from a spin-off had it not been for mortgage and other problems which barred that course. A spin-off would have retained for each Northern Pacific stockholder a pro rata share of the natural resources without calling upon him for funds. On the other hand, the proposed sale would mean that any stockholder who is financially unable or is unwilling to pay for stock in the land company would be barred from future participation in the natural resources properties. To place the stockholders in a position of having to pay a substantial amount of additional money as a mandatory price of retaining any interest in the natural resources properties would obviously be unfair. Negotiable rights to subscribe for land company shares issuable to the stockholders would be ostensibly salable, but there is no assurance that they would have any value or be marketable; and even so, the rights would be dubious compensation for loss of natural resources by those who do not choose to exercise such rights.

In an effort to show the possibility of procuring an underwriting for the public sale of the land company stock, intervener's evidence included testimony of an officer of a midwestern investment house, showing intervener's proposal was feasible and practical based on the limited facts available (having been assigned to testify but two days before) and the limited study (predicated on a limited knowledge of the pertinent mortgages and no familiarity with the operating details and procedures of Northern Pacific with respect to its non-transportation properties) given the proposal; that it would not be difficult to raise $112 million to $117 million of capital or any amount for any type of exploration for the benefit of the economy, but offered no assurance that his firm would or could make a committment of that magnitude. Moreover, intervener did not produce any reliable assurance that a firm underwriting had been secured. The proposal contemplates that all expenses of carrying out the plan, which apparently would include costly underwriters' commissions and expenses, must be borne by Northern Pacific, and all present stockholders, whether

or not they participate in the land company, would be sharing in those expenses since they would continue as stockholders in the Northern Pacific railroad property.

Thus, intervener's proposal is impractical of accomplishment and unfair to the Northern Pacific stockholders whom it purports to benefit for several reasons. The natural resources properties are subject to the liens of Northern Pacific's prior lien and general lien mortgages, and it would require a resubmission of the new whole unification program in altered form to all of the stockholders of all of the applicants for approval. The mortgages were the major obstacles that caused an abandonment of the spin-off suggestion. Intervener was aware of the problem and agreed that spin-off was impossible. Significantly, the provisions of the prior lien mortgage may preclude a sale at one time of all of the remaining lands now under the mortgage, since the proceeds of such sale would have to be deposited with the trustee of the prior lien mortgage, in order to secure a release of the properties, and applied by the trustee in accordance with the terms of the prior lien mortgage. The trustee (who testified that the prior lien mortgage does not contain authority for release of the land grant lands as a whole under any of the proposals discussed—would refuse to execute a release if so requested unless ordered by a court of last resort in an adversary proceeding in which some bondholders would be made parties) has veto power over the prices and terms of sale, and the mortgage limits the use of the proceeds of sale. A sale without release would mean that the land company's acquisition would continue to be subject to the liens of the prior lien and general lien mortgages. While intervener did not contemplate that fact it points out that the proceeds of the sale of such lands net after expense and taxes paid into the hands of the trustee of the prior lien mortgage since 1896 have amounted to about $110 million, and in the fiscal year ended June 30, 1896, alone 6,576,000 acres were sold and released from the lien of the prior lien mortgage. However, intervener fails to grasp the significance of the fact that by its proposal all of the remaining properties would be sold as a package, and as indicated the

trustees obviously may not release all of the natural resources properties at one time without appropriate court order for reasons previously stated. The record reflects the serious mortgage questions of price created by intervener which not only presented testimony that the proposed sale price of about $112 million would be fair, but also its testimony claiming the properties were worth about $295 million. In view of the fact that the suggested price falls short of the amount required to pay off both mortgages (about $150 million), the trustees indicate they would submit to a proper court not only the issue of whether a bulk sale is proper, but also the question of appraisal of the properties for the purposes of a sale of that kind.

Thus, intervener's two points, comprising its objections to the exchange ratios and the transactions, are without merit. The record clearly shows that the shares allotted to the Northern Pacific stockholders reflect the full potential value of the natural resources properties, and intervener's proposal dealing with transfer of the natural resources properties to a newly formed land company for exploitation purposes is not feasible, rather, it is unfair to the majority of the Northern Pacific stockholders whose affirmative vote on merger as proposed is now a matter of record. Accordingly, its requested conditions are without merit, should not be imposed, and are rejected for the reasons herein discussed.

Intervening railroads.

In *Detroit, T. & I. R. Co. Control*, 275 I.C.C. 455 (1950), the Commission prescribed a set of conditions for the protection of connecting carriers. Since then, conditions, in substantially the same form, have regularly been imposed in numerous proceedings under section 5(2) of the Act involving control or merger of carriers and have become known as the "standard routing conditions." See *Pennsylvania R. Co.—Control—Lehigh Valley R. Co.*, 317 I.C.C. 139, 151, and *Southern Ry. Co.—Control—Central of Georgia Ry. Co.*, 317 I.C.C. 557, on reconsideration, 317 I.C.C. 729, and as supplemented, I.C.C.,

decided February 16, 1964, herein called the *Southern-Central case*. Cognizant of the many proceedings in which such action has been taken and in conformity with an expressed intent not to disturb drastically the situation in respect of the capture of traffic not presently handled by the respective applicant railroads, applicants set out in their application six conditions similar thereto and indicated their willingness to accept same as conditions to approval herein with respect to each of the proposed mergers and the proposed lease.

During the hearings, certain clarifying changes, which would not alter the substantive intent of the standard routing conditions, were incorporated in the applicants' proposed conditions, evidenced by separate stipulations between applicants on the one hand, and, on the other, several of the intervening railroads.

The first, executed between applicants and Rock Island dealt primarily with a clarifying addition to applicants' proposed conditions dealing with the handling of traffic in overhead service. A later one, executed between applicants and Union Pacific dealt primarily with an amendment to clarify one of applicants' proposed conditions, and that stipulation is discussed in connection with Union Pacific's evidence.

Rock Island subsequently expressed agreement with and to the form set out in the Union Pacific stipulation. Subsequent individual stipulations were executed between applicants and Southern Pacific, Western Pacific, Santa Fe, and Soo, and each expressed agreement with and to the form and substance of the general conditions contained in the stipulation between applicants and Union Pacific and each requested additional special conditions which were agreed to by stipulations with applicants, as subsequently discussed. Of those conditions, the location of the various lines of railroad, the routing practices for the interchange of traffic, and the effects of the stipulation are significant. In discussing the intervention of each of the named carriers, reference will be made in more detail to the particular stipulations.

C&NW does not agree with the standard routing conditions as stipulated to between applicants and Union

Pacific, and concurred in by others, but seeks a departure therefrom, as subsequently described.

Milwaukee likewise does not agree with the standard routing conditions but requests special conditions, as subsequently described.

Rock Island. Rock Island was permitted to intervene by order entered October 2, 1961. On January 18, 1962, a stipulation was entered into between New Company and intervenor Rock Island whereby it was agreed that the routing conditions applicants sought to be imposed herein as set forth in the application be amended in minor respects. The stipulation was accepted of record (Exhibit 41) on January 18, 1962. The effect of the stipulation was to modify and supplement certain language in applicants' requested condition dealing with the handling of traffic in overhead service. Rock Island offered no evidence, but following a subsequent stipulation entered of record between New Company and Union Pacific providing for certain other proposed modifications in such traffic conditions, Rock Island indicated its agreement with the terms of the stipulation between applicants and Union Pacific, subsequently discussed, and indicated that if the conditions were imposed, its interests would not otherwise be affected.

Union Pacific. The lines of Union Pacific, particularly its Northwestern District, with its headquarters in Portland, embrace some 4,400 miles of main track, including its main line from Granger, Wyo., to Portland, Seattle and Spokane via Pocatello, Idaho. Other lines extend east from Granger to Omaha, Nebr., via Cheyenne, Wyo., and Denver, Colo., southwest from Granger via Ogden and Salt Lake City, Utah, to Los Angeles, Calif., and north from Ogden to Butte, Mont., via Pocatello, with trackage rights over numerous segments.

Union Pacific maintains at Portland large facilities for the overhaul and repair of diesel locomotives and freight and passenger cars, as well as facilities necessary to serve many industries within the Portland switching district. Additional facilities for handling freight at Portland are maintained by Northern Pacific Terminal Company in which Union Pacific has a 40 percent investment. Union

Pacific also owns a one-half interest in Portland Traction Company, a short line of railroad operating in the Portland area serving numerous industries.

As of December 31, 1960, Union Pacific's investment in operating property in the Portland area amounted to almost $21 million. In addition, its investments in Northern Pacific Terminal Company and the Portland Traction Company would raise its investment figure to more than $25 million. Of that amount, improvements to Union Pacific's yard at Portland since 1956 account for almost $6 million. Those figures do not include investment in equipment assigned to or used in the Portland area or investment in trucks and trailers used by its motor carrier subsidiary. As of December 31, 1960, the gross investment of Union Pacific in rolling stock approximated $672 million. Its investment in its main line between Portland and Marengo, Wash., the interchange point with Milwaukee, a distance of 310 miles, approximates $67 million.

In conjunction with its investment in the Portland area, Union Pacific employed an average of 1,845 persons in 1961 with a total payroll of $11.5 million. For the same year, Union Pacific paid ad valorem taxes on its Portland properties amounting to $340,107.

Union Pacific has exerted continuous efforts to attract industry to its rails at Portland as well as at other points of its system. Of the total investment of $3.25 million in industrial and non-operating property in the Portland area as of December 31, 1960, more than $1.5 million was expended in recent years to develop industrial sites.

Union Pacific initially intervened for the purpose of obtaining conditions adequate to preserve existing through routes and service and existing traffic and operating relationships between it and New Company in the event of approval herein.

On March 15, 1962, a stipulation was entered into between New Company and Union Pacific whereby it was agreed that the conditions applicants sought to be imposed herein as set forth in the application be amended. The stipulation was accepted of record (Exhibit 68), March 19, 1962, and is set forth in appendix N-1 hereto. The conditions described are in conformity with the pattern

of the standard general routing conditions prescribed in numerous prior proceedings by this Commission, the differences in language of the Union Pacific stipulation being utilized for purposes of clarifying the import and application herein of such standard conditions. Under its stipulation Union Pacific would be enabled to continue to enjoy the same relative competitive position on its north-south traffic and its traffic to and from the western Washington area it serves.

Those general conditions covered by the Union Pacific stipulation are comprehensive and are designed to protect and continue the existing traffic and operating relationships between applicants and the various connecting carriers. New Company has indicated that its policy in the establishment of new rates, including the adjustment of existing rates, and the various types of incentive rates, such as multiple-car and volume rates as well as the normal car rates (which policy is not separate and apart from the standard conditions but is embraced within such conditions), will be to provide for application of such rates of joint-line routes that have been generally used between the origins and destinations involved.

It is significant that other intervening railroads (Rock Island, previously discussed, and Western Pacific, Southern Pacific, Santa Fe, and Soo), concluded that the general conditions as described in the Union Pacific stipulation were adequate and concurred in them. However, as previously indicated Southern Pacific, Western Pacific, Santa Fe, and Soo seek additionally certain special conditions subsequently described.

Upon the intervention of Milwaukee and its request for special conditions, Union Pacific acquired a new interest in the proceedings. It opposes Milwaukee's proposed condition by which the latter seeks entry to Portland by trackage rights over applicant's lines between Longview Junction, Wash., and Portland.

When Oregon intervened and requested special conditions in the form of a proposal that Milwaukee acquire SP&S and trackage rights over Oregon Electric from Portland to Eugene, Ore., and over Southern Pacific to the extent presently held by Oregon Electric, Union Pa-

cific's interest was further aggravated and it likewise expressed opposition to Oregon's proposal.

Union Pacific's evidence and arguments in respect of the indicated Milwaukee condition and the proposal of Oregon will be discussed in connection with the separate proposals and interests of those named intervenors.

Southern Pacific. Southern Pacific's lines extend generally from Ogden, Utah, west to Oakland, Calif., via Fernley, Nev., and from El Paso, Tex., west to Oakland and San Francisco, Calif., via Los Angeles, Calif., from El Paso east to New Orleans, La., and north from Oakland, via Davis, Sacramento and Roseville, Calif., and Reno and Fernley, Nev., to Portland, Oreg., via several routes, including via Klamath Falls and Chemult, Oreg. Its lines meet those of Great Northern, Northern Pacific and SP&S, which would be the lines of New Company, at Portland, Chemult, and Klamath Falls.

Great Northern, Northern Pacific and SP&S interchange substantial traffic between California and the Pacific Northwest with Southern Pacific at Portland and maintain joint rates with the Southern Pacific for such interchange. That interchange gives Southern Pacific and Northern Pacific their maximum long hauls. Great Northern, however, also has a line which extends from Wishram (east of Portland) south through Chemult and Klamath Falls, Oreg., to Bieber, Calif., where it connects with Western Pacific. SP&S, jointly owned by Great Northern and Northern Pacific, joins with Great Northern in rates through Bieber. On traffic to, from or through California, Great Northern obtains its maximum haul when interchange is made at Bieber. It maintains a broad line of joint through rates via Bieber with Western Pacific (and with Western Pacific's connections, including Santa Fe).

Southern Pacific reaches both of the intermediate points of Chemult and Klamath Falls. Chemult, 70 miles north of Klamath Falls at present is a gateway for interchange of certain traffic between Southern Pacific and Great Northern to or from points east of the Cascade Mountains (alternative to the Portland gateway), but not on traffic to or from North Coast seaboard areas. Klamath Falls is not a general gateway for interchange.

Southern Pacific and Northern Pacific each solicit for their maximum hauls via Portland. Great Northern solicits Southern Pacific traffic to or from points east of the Cascade Mountains for the Chemult gateway in preference to the Portland gateway. Great Northern, Western Pacific and Santa Fe solicit general California for movement via Bieber, as subsequently discussed.

Southern Pacific initially intervened for the purpose of protecting its position in respect to preservation of existing through routes and service. Following unification, the expressed inclination of New Company, were it not for the stipulations subsequently discussed, would be to solicit via Bieber in preference to Portland or Chemult, since that would produce its longest haul. Applicants' consultants produced estimates of diversion of traffic on such a basis and showed an anticipated annual net loss by Southern Pacific of $4,163,404.

Southern Pacific urges approval of the proposed unification if conditions are imposed which will insure its receiving substantially the same proportion of available traffic over the indicated routes as at present, does not weaken the competitive position of its lines between California and Oregon points, and promotes the maximum flow of railroad traffic over the available rail routes along the Pacific Coast, with such traffic moving along the most efficient and economical routes; otherwise it opposes the application.

During the hearing, officers of Southern Pacific and of Great Northern and Northern Pacific discussed whether the natural objective of New Company to receive its longest possible haul and the desire of Southern Pacific to maintain its full participation in that traffic could be resolved without impairing the benefits of the unification. On January 18, 1962, agreement was reached and a stipulation was entered into between applicants and Southern Pacific whereby it was agreed that the standard routing conditions originally sought to be imposed be supplemented with special conditions, as set forth in appendix N-2 hereto.

The stipulation was accepted of record (exhibit 42). As used in the stipulation Consolidation Company means

New Company or the merged lines, and reference to Santa Fe contemplates inclusion of its Texas subsidiaries. Subsequently, on March 19, 1962, Southern Pacific expressed its concurrence and agreement with the general or standard routing conditions covered by the stipulation between applicants and Union Pacific which modified the applicants' originally requested conditions. The effect of the special conditions covered by the Southern Pacific stipulation would require, upon approval of the transaction by the Commission, the establishment of an additional gateway at Klamath Falls for the maintenance of joint rates and through routes and the solicitation and movement of traffic from and to points on New Company and Southern Pacific and their short line connections. Oregon Trunk and Oregon Electric are not considered to be "short line connections" of New Company within the meaning of the Southern Pacific stipulation. In practical effect, however, the proposed Klamath Falls gateway will voluntarily be open to traffic to or from Oregon Trunk, and it would become a service gateway in lieu of Chemult. New Company would observe strict neutrality between the Klamath Falls and Bieber gateways as to solicitation of traffic. Both roads would conduct operations on a basis no less favorable than accorded by New Company on traffic handled via Bieber or by Southern Pacific on traffic handled via Portland. New Company would be left free to solicit competitive traffic to, from or through California via the inside route (Bieber or Klamath Falls), in prefernce to Portland. Western Pacific and Santa Fe would be free to solicit via Bieber, and Southern Pacific would be free to solicit for its routes, including via Portland which produces its longest haul. Southern Pacific would observe neutrality of solicitation between New Company and Union Pacific on traffic to or from Oregon, Washington, northern Idaho, and British Columbia except that Southern Pacific would solicit in favor of New Company from or to Los Angeles and territory south and east thereof served in common by Union Pacific and Southern Pacific where Union Pacific maintains or may maintain rates via its Salt Lake line that are competitive with Southern Pacific through Portland.

The agreement covered by the stipulation will insure that, after consummation of the proposed transactions, Southern Pacific will continue to receive substantially the same proportion of available traffic over its routes with the parties to the proposed unification.

The stipulation changes the point of interchange between Southern Pacific and the line through Bend from Chemult to Klamath Falls because the interchange facilities at Chemult are limited, whereas there are ample facilities at Klamath Falls, which has the further advantage of being a Southern Pacific division terminal. If there were to be any expansion of interchange between Southern Pacific and the line through Bend it was agreed that it should be at Klamath Falls rather than Chemult. The parties to the stipulation agree that it tends as nearly as possible to preserve the status quo through the establishment of the Klamath Falls interchange, and it is expected that Southern Pacific's earnings will be protected, and it is believed that through maximum effective use of its solicitation forces, the volume of business of western Oregon moving through the Portland gateway will not be seriously diminished. Southern Pacific expects that, with the stipulation in effect, the new gateways and new rates and service it would establish should enable it to improve its traffic pattern by diversion back to the rail lines of a large volume of traffic now moving particularly to Spokane and other points east of Cascade Mountains via truck, which it earnestly seeks. The stipulation would precipitate numerous benefits to shippers and to the railroads in opening up a shorter route between California points on Southern Pacific and the territory east of the Cascade Mountains, as the route via Chemult has not been a competitive route, service-wise.

On southbound traffic, Southern Pacific recognizes that New Company would attempt to secure its long haul via the line through Bend on all traffic originating in the Pacific Northwest. Southern Pacific would no longer enjoy the advantage of receiving at the Portland interchange all of the traffic originated at points on the Northern Pacific in the Pacific Northwest. Southern Pacific, however, expects to continue to secure a preponderance of

New Company traffic (originating in Pacific Northwest) at the Portland interchange, particularly in view of the provisions in the stipulation requiring the maintenance of equal rates and service via Portland. The greater part of that traffic originates west of the Cascade Mountains, and for that traffic the Southern Pacific route, with interchange at Portland, has the shortest distance and enjoys a definite service advantage. Southern Pacific also maintains strong and able solicitation forces in the Pacific Northwest. A diversion of some traffic to the line of New Company through Bend is expected and it will insure Southern Pacific's continuing a substantial haul on that traffic in that the stipulation provides for the establishment and maintenance of joint rates and service via the line through Bend and Southern Pacific would interchange at Klamath Falls on traffic from all of the Pacific Northwest (rather than just the portion east of the Cascade Mountains) on bases no less favorable than other routes, and commits New Company to observe strict neutrality between the Klamath Falls and Bieber gateways as to solicitation of traffic, regardless of origin or destination.

On northbound traffic from California points, the stipulation permits Southern Pacific to continue to secure its long haul to the Portland interchange. That traffic originates in territory served by Southern Pacific and, to the extent that it is handling that traffic, Southern Pacific expects to continue to handle it via the Portland interchange because of the provisions of the stipulation concerning the maintenance of equal rates and service via Portland. Any traffic which might be lost to the Portland interchange would continue to be handled by Southern Pacific, at least as far as the Klamath Falls interchange, in view of the provisions of the stipulation for the establishment and maintenance of joint rates via Klamath Falls with the line through Bend on traffic from California points to points in the Pacific Northwest.

Imposition of the conditions set forth in Southern Pacific's stipulation with applicants as conditions to approval represents a practicable and reasonable solution to the serious problem the proposed unification presents to

it. Were it not for such conditions, Southern Pacific would obviously stand to lose substantial traffic which it now handles, notwithstanding the fact that the routes and facilities for that traffic have over the years been continually developed and improved at a cost of many millions of dollars.

Western Pacific. Western Pacific operates lines of railroad between Salt Lake City, Utah, and San Francisco, via Fernley and Reno, Nev., and Keddie, Marysville, Sacramento and Stockton, Calif., and between Keddie and Bieber. It and its connections serve the Pacific Northwest through the Bieber gateway in a joint route of Santa Fe, Western Pacific and Great Northern. On traffic moving via Bieber, its principal connections with other major railroads are at Beiber with Great Northern, at Salt Lake City with Denver and Rio Grande, and at Stockton with Santa Fe. It connects with its subsidiaries Sacramento Northern and Tidewater Southern at numerous California points. Together with its connections, the Bieber gateway provides the only railroad service competitive with Southern Pacific between the Pacific Northwest and most of California and certain adjacent territories. The route is extensively used on both west of transcontinental and transcontinental traffic.

Western Pacific recognizes that the proposed unification, if consummated, will change the present railroad alignment in the Pacific Northwest and directly affect existing relationships between Northern Pacific and Great Northern, on the one hand, and on the other, their connecting lines, including Western Pacific and Southern Pacific, which are directly competitive with each other on most traffic, and herein the traffic moving to, from, and through California is of vital concern to Western Pacific Thus, its interest and participation herein is limited to and directed towards obtaining imposition of conditions to any approval which would provide, at the minimum, for maintenance of its present competitive position.

As indicated, Western Pacific and Southern Pacific maintain gateways with applicants on traffic moving to, from and through California; practically all such Nor-

thern Pacific traffic is interchanged via Portland with Southern Pacific; and a substantial volume of Great Northern traffic moves via Bieber in connection with Western Pacific. Further, Great Northern also interchanges traffic with Southern Pacific at Portland and Chemult, refuses to short haul itself with Southern Pacific via Chemult, because Southern Pacific's participation in that gateway is limited. Thus it appears on the basis only of the stipulation between applicants and Southern Pacific, New Company would reverse that policy and not insist on its long haul via Bieber. The Klamath Falls gateway (sought by Southern Pacific) would improve Southern Pacific's routes and service to points east of the Cascade Mountains.

At present Western Pacific is hampered in its competition with Southern Pacific by refusal of Northern Pacific to join in through rates and routes. It fears imposition of the conditions embraced in the stipulation between applicants and Southern Pacific without imposition of the conditions it seeks would irreparably injure its system in that it would possibly nullify the Bieber gateway's participation in traffic moving to and from present Great Northern points by reason of the fact that Southern Pacific would be enabled to retain its present Portland gateway while traffic moving via Beiber could be diverted through Klamath Falls.

Under the stipulation between applicants and Southern Pacific while there would be neutrality of solicitation between Bieber and Klamath Falls, and both parties would conduct operations via Klamath Falls on basis no less favorable than accorded by applicants on traffic via Bieber or by Southern Pacific via Portland, the agreement is silent as to whether that gateway would receive *equal* treatment with the new one at Klamath Falls. Western Pacific points out on brief that the agreement by applicants with Southern Pacific supersedes a memorandum of agreement providing for preferential solicitation now existing between Southern Pacific and Northern Pacific.

On March 14, 1962, a stipulation was effected between applicants and Western Pacific which confirms that both roads will maintain joint through rates via Bieber on

bases no less favorable than via other routes, as more particularly set forth in the appendix N-3 hereto.

The stipulation was accepted of record (Exhibit 69). The agreement guarantees that New Company will preferentially solicit for its inside route (via either Klamath Falls or Bieber) and will not give preference to its route via Portland. Western Pacific also will solicit via the Bieber route and in favor of New Company. While the activities provided for by the stipulation might be normally expected even in the absence of such conditions to unification, the agreement guards against harm to the Bieber gateway which Western Pacific feared might develop. OE and OT are "connections" of New Company and the Western Pacific stipulation applies.

Thus, the conditions covered by the stipulation between applicants and Western Pacific provide the missing essential not reflected in the stipulation between applicants and Southern Pacific, that the present Bieber gateway would be treated on at least an equal basis with Klamath Falls.

Santa Fe. The railroad lines of Santa Fe are extensive through Illinois, Iowa, Missouri, Kansas, Nebraska, Colorado, Louisiana, Texas, Oklahoma, New Mexico, Arizona, and California. While there is no direct interchange between Santa Fe and Great Northern or Northern Pacific, its direct interest herein is predicated on the 1931 extension of line of Western Pacific from Keddie to Bieber, Calif., where the Western Pacific interchanges directly with Great Northern. Prior to 1931, Santa Fe was dependent upon Southern Pacific for connecting traffic to and from points on Great Northern, Northern Pacific, Union Pacific, and Milwaukee in the Pacific Northwest. The majority of the points reached by the lines of Santa Fe in California are also served by Southern Pacific. Santa Fe and Western Pacific and its subsidiaries serve only a few common points such as San Francisco, Oakland, Pittsburgh, Port Chicago, Escalon and Stockton, Calif. Upon completion of the Bieber line by Western Pacific in 1931, Santa Fe joined with Western Pacific and Great Northern in publishing joint rates between points in the Pacific Northwest on the one hand, and, on the

other, points in California, Arizona, and New Mexico, and since has increasingly cooperated with Great Northern and Western Pacific not only in the matter of rates and routes, but in other related matters. The preponderance of traffic handled by Santa Fe in connection with Western Pacific is interchanged at Stockton. Western Pacific acts as a bridge line between the interchange with Santa Fe at Stockton and the interchange with Great Northern at Bieber on traffic moving between Santa Fe and Great Northern. The Santa Fe-Western Pacific alignment on north-south traffic was effected to compete with Southern Pacific and the Santa Fe and Western Pacific joined with Great Northern to form a through route via Bieber for traffic moving between points in California, Arizona and New Mexico, on the one hand, and, on the other, points in Oregon and Washington, as well as points east thereof.

Since 1947, the three lines (Santa Fe, Western Pacific and Great Northern), have revised their freight schedules on twelve separate occasions and Santa Fe indicates the schedules require close cooperation and coordination by the parties if they are to maintain their effectiveness in competing with Southern Pacific's route between California and Portland.

Santa Fe has played an important role in the success of the Bieber route since its inception and indicates that approximately 57 percent of the total 1960 carload business interchanged at Bieber between Great Northern and Western Pacific had either a prior or subsequent rail haul over the liens of Santa Fe. For that year 32,328 Santa Fe cars which moved over the Bieber route had origin or destination within Mountain Pacific territory and in addition 6,499 of its transcontinental cars moved via Bieber.

On March 14, 1962, Santa Fe and applicants entered into a stipulation whereby it was agreed that the standard routing conditions sought to be imposed by applicants be supplemented with special conditions set forth in the appendix N-4 hereto. The stipulation was accepted of record (Exhibit 70). At the hearing it agreed with the

modifications of applicants' original conditions as covered by the Union Pacific stipulation.

Since the interests of Santa Fe, as a connecting carrier with Western Pacific, are the same as those of Western Pacific, the stipulation similarly provides for maintenance of the Bieber gateway and preferential solicitation of New Company via the inside route. Oregon Electric and Oregon Trunk are "connections" of New Company within the meaning of the Santa Fe stipulation. Under the Santa Fe stipulation, in harmony with the Southern Pacific stipulation previously described, the maintenance of rates and routes and gateways is equalized for competitive purposes and Santa Fe is thus enabled to continue together with Western Pacific to enjoy and participate in substantially the same proportion of available traffic over the indicated routes as at present, and would not weaken its competitive position.

The potential of the three stipulations last mentioned will produce service advantages in the handling of the shipments and will provide more competition on the north-south traffic. The pertinent mileages via the routes shown below are significant and are indicated as follows:

Mileages:

	From LOS ANGELES			From SAN FRANCISCO		
	Via			Via		
To	Bieber (a)	Klamath Falls (b)	Portland	Bieber (a)	Klamath Falls	Portland
Spokane	1474.9	1341.9	(d) 1469.8	1036.9	968.9	(d) 1096.8
Seattle	1473.4	1340.4	(c) 1274.5	1035.4	967.4	(c) 901.5
Everett	1507.8	1374.8	(c) 1308.9	1069.8	1001.8	(c) 935.9

(a) Via Santa Fe-Stockton-Western Pacific-Bieber-Great Northern

(b) Via Southern Pacific-Klamath Falls-Great Northern

(c) Via Southern Pacific-Portland-Great Northern

(d) Via Southern Pacific-Portland-SP&S

The stipulations will also reduce the extent of anticipated diversion of traffic. Upon execution of the stipulations, applicants reviewed their diversion studies and revised their estimates of diversion of traffic in connection with those three carriers. The effects of the proposed unification on Southern Pacific, Western Pacific and Santa Fe with and without the Southern Pacific stipulation are estimated by applicants as follows:

	Southern Pacific	Western Pacific	Santa Fe
With stipulation	$2,708,028 (loss)	$ 117,328 (gain)	$442,332 (loss)
Without stipulation	4,295,080 (loss)	2,027,070 (gain)	49,400 (loss)

Additionally, New Company will receive an estimated additional net income of $504,260 from the consolidation after contingency allowances, but before federal income taxes. While Western Pacific will not receive the large gain which was previously anticipated (before the stipulation), it will still be gaining some income. The loss to Santa Fe will not be as small as it would have been in the absence of the stipulation, but will still not be large. The estimated loss of Southern Pacific from the effects of unification will be the largest estimated loss to any of the applicants' connecting carriers but, with the stipulation in effect, will be considerably less than one half of one percent of Southern Pacific's operation revenues for 1960.

In net effect, these stipulations will more nearly maintain the status quo with respect to the participation of the carriers in the traffic in question and, in addition, will benefit the shippers by providing better service.

Soo. Soo, permitted to intervene at the hearing herein on October 10, 1961, expressed opposition to the proposed unification because its competitive position and financial condition would be adversely affected unless conditions are attached to any order authorizing the transaction. If its interests are so protected, Soo is not opposed to the transactions.

Soo, a subsidiary of the Canadian Pacific Railway Company, operates in Michigan, Wisconsin, Illinois, Minnesota, North Dakota, South Dakota and Montana; a line

of its railroad between Chicago and Minneapolis serving extensive commercial and agricultural areas. It also has main line service from Minneapolis to Sault Ste. Marie, Mich., and from Minneapolis to Noyes, Minn., and Portal, N. Dak. It has routes for overhead traffic and provides important points for interchange of traffic with many lines. In addition, it serves important agricultural and mining areas in Minnesota, northern Wisconsin and northern Michigan. Much of the territory served by it is also served by the principal applicants, and a major competitor upon unification would be New Company. It is also in competition with C&NW, Milwaukee and others. Numerous industries and communities on its lines are solely dependent upon it for adequate rail setrvice, car supply and competitive rates. Twin Cities gateway is one of the most significant gateways on Soo's system. Substantial traffic is interchanged at that gateway with applicant railroads and others, and it is the principal gateway through which it fears diversion of traffic to New Company unless protective conditions are imposed to any approval herein.

On the basis of certain underlying data to applicants' estimate of potential diversion from Soo to New Company following unification of traffic producing revenues annually of $1,238,576, and concurrent gain in revenue annually of $42,588 reflecting the policy of certain traffic managers to divide their traffic based on the number of lines soliciting it, or a net loss of gross revenue of $1,195,988, one-quarter of one percent of Canadian Pacific's system operating revenues for 1960 and 1.6 percent of Soo's gross revenue for 1961, Soo appraised the impact of the proposed unification through a detailed study. From the results of the study, Soo concluded that unification would affect it adversely by a loss in freight revenue approximating $1,260,000, and a gain in freight revenues about as estimated by applicants. In addition, it appraised the operating aspects unification would have on it, concluding that because of traffic diversion, it would be able to reduce expenses so that by reason of such diversion the loss in net income, exclusive of Federal income taxes, would approximate $1 million.

Soo thus concluded such a loss in net income a matter most serious and which would adversely affect its financial vigor. Subsequent to its intervention herein negotiations were held with representatives of applicants which resulted in a stipulation in respect of the Soo special conditions as set forth in appendix N-5 hereto. The stipulation was accepted of record (Exhibit 152). As shown, Soo proposes that the Commission adopt the standard routing conditions as set forth in the stipulation between applicants and Union Pacific, previously described herein. The stipulation otherwise relates to agreements to be made by New Company and Soo after consummation of the unification, subject to any necessary approval of the Commission. The proposals therein on which no Commission approval or action is sought at this time, are for the amendment of certain existing coordination contracts between Soo and Great Northern and Northern Pacific, for the granting of trackage rights to Soo in the Twin Cities area to enable Soo to make direct interchange with Minnesota Transfer and Rock Island. There is also an agreement to continue to cooperate in finding ways to improve service by considering installation of automatic interlockers at various crossings and coordination of lines where practical. While such loss standing alone would adversely affect Soo, with the conditions covered by the stipulation or substantially equivalent conditions in effect the undertakings agreed to by applicants would enable it to overcome approximately the impact of the traffic diversions, and remain a strong and active competitor in the territory it serves and for traffic overhead to its lines. Under such circumstances, it does not object to the proposed unification. Moreover, it would open up the ability of Soo to serve certain shippers between Lignite and Crosby, Minn., and betwen Bemidji and Schley, Minn., to which it does not now have access. Competition would be intensified. Transportation costs would be lowered, and more efficient use of transportation would result.

On brief, intervener Justice contends that the stipulations between applicants, on the one hand, and, on the other, Union Pacific, Southern Pacific, Santa Fe, Western

Pacific and Soo are unjust and unreasonable and are against the public interest, and that applicants and Southern Pacific, Western Pacific and Santa Fe have conspired to violate the antitrust laws through stipulations which constitute restrictive rate-fixing agreements which are in restraint of trade rather than competitive rate agreements and which flagrantly violate the policy of the antitrust laws. Further, it argues that they cannot be approved by the Commission under the Act as just and reasonable terms or conditions to approval of the proposed unification.

The record clearly shows Union Pacific stipulation merely clarified the standard routing conditions frequently imposed by this Commission in proceedings of this nature. The Soo stipulation, in accord with the standard routing conditions, also deals primarily with matters in the future on which no Commision action is now sought. Justice' arguments in respect of those stipulations have no merit.

Justice acknowledges that the Commission has authority to impose just and reasonable conditions in proposals under section 5(2) of the Act, but contends that the requested conditions deal with "agreements between or among two or more carriers relating to rates . . . ." described in section 5b(a) of the Act the standards and requirements of which must be met before Commission approval can be given, and which has not been done. It argues that although under the Act free and unrestrained competition in rate making does not exist, there is an important and substantial zone of reasonableness within which carriers can and should compete for traffic on the basis of rates; and that under the described stipulations, shippers would be deprived of the benefits of competitive rate making on all major north-south routes to and from the Pacific Northwest.

At the outset, the agreements covered by the stipulations may not become effective unless and until the Commission finds that they properly may be imposed as conditions to approval and consummation of the transactions proposed under section 5 of the Act. The agreements form the basis of the indicated stipulations in which the

signatories, officials of the parties of record have a detailed knowledge of the railroad operations of their principals and whose competence has not been questioned. The record reflects in detail substantial evidence which is sufficiently adequate to show the effect of each of the agreements in the described stipulations, and reflects the obligations of each of the parties, both separately and in the aggregate. As has been shown, they are clearly designed to protect each of the participating intervening carriers in their respective areas of traffic solicitation following unification, which but for those stipulations would seriously disrupt the competitive balance of traffic in the areas, between the carriers, and through the gateways involved. Each of the railroad interveners involved have separately entered into stipulations with applicants after concluding, on a basis of studies undertaken by applicants and reviewed by the affected interveners or their officers in the light of their knowledge of the operations, that with such agreements, if imposed as a condition to approval of the proposed transactions they would be competitively maintained in the status quo, and that their continued ability to provide adequate transportation service in all areas presently served would not be adversely affected, Intervener Justice' allegation of conspiracy is unsupported.

Justice argues that under section 5b(6), the Commission is expressly prohibited from approving "any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure." . . . and that the stipulations or agreements afford no such rights and do not meet that standard.

Contrary to intervener's contention the broad language of the stipulations does not restrict the signatories from independent action. It does permit and encourages their solicitation efforts along channels whereby destructive competition would be avoided, sound economic conditions promoted, shipping interests protected and carriers al-

lowed an independence of action free and unrestrained in furtherance of the national transportation policy. Intervener Justice conveniently overlooks the zealously and individually pursued interests of the carriers Southern Pacific, Western Pacific and Santa Fe, which after careful consideration of the potential and estimated effect of unification without such protective agreements, entered into the described stipulations solely to protect their respective competitive positions. Intervener Justice' contentions are without merit.

Milwaukee. Intervener Milwaukee operates as a common carrier by railroad in interstate or foreign commerce, having grown from a 20-mile railroad constructed by a predecessor in Wisconsin in 1847 to its present 10,596-mile railroad system with lines in 13 Northwestern and Midwestern states.[32] It is in active competition with one or more applicant railroads in the last 11 states mentioned in which it has over 96 percent of its mileage, and would, following unification, be New Company's principal rail competitor. Its lines extend (2) from Chicago west to Twin Cities, Sioux City, Omaha and Kansas City, with branch and secondary lines in Indiana, Illinois, Wisconsin, the Upper Peninsula of Michigan, Iowa and Minnesota, serving a territory having comparable traffic and transportation characteristics to Burlington, and (b) from Chicago west via Sioux City, Twin Cities, Aberdeen, S. Dak., Miles City, Forsyth, Butte and Missoula, Mont., Plummer, Idaho, Spokane and Marengo, Wash., to north Pacific points, including Seattle, Tacoma, Everett, and Longview, Wash., serving North and South Dakota, Montana, northern Idaho and Washington, a territory having traffic and transportation characteristics comparable to the Northern lines and it competes with one or both, at many points.

Milwaukee opposes the applications on the grounds that the improvements applicants claim would result would

[32] With total mileages in those states shown of record in parenthesis: Michigan (178), Indiana, Illinois, Wisconsin (1520). Missouri, Iowa (1781), Minnesota (1329), Nebraska, North Dakota (366), South Dakota (1738), Montana (1251), Idaho, and Washington (1062).

seriously threaten its competitive position and even its survival and that approval of the proposed unification would be adverse to the public interest unless the public is assured effective rail competition to balance the elimination of competition between the two powerful parent lines by imposition of conditions adequate to enable Milwaukee to realize its full service potential.

To offset anticipated and probable loss of revenues annually which applicants estimate would approximate $1,040,148, and which the Milwaukee estimates would approximate $6,179,483, the latter requests the Commission impose specific conditions to approval of the unification, if it finds it otherwise consistent with the public interest. Those conditions as redefined on brief which appear in substantially more detail than those discussed at the hearing, are set forth in appendix N-6.

Some historical relationships of Milwaukee to the Northern Lines warrant discussion. Northern Pacific in 1883 extended its operations from Minnesota to Washington, followed in 1893 by Great Northern. Minneapolis was then the natural point of interchange between the Milwaukee and the Northern Lines. By 1884, the Milwaukee had expanded within the midwestern territory from Wisconsin west to Fargo and the Missouri River gateways of Kansas City and Council Bluffs. In 1901, competitive relationships were altered by acquisition by the Northern Lines of control of Burlington affording access to Chicago. In 1909, the Milwaukee completed an extension of line to Puget Sound through Montana, Idaho, and Washington, with branch line feeders for the main line opening up new territories to settlement, agriculture and mineral development. By 1914, the previous rapid growth of the Washington lumber industry had leveled off, and subsequent economic considerations finally culminated in its receivership in 1925.

In 1928, Milwaukee emerged from receivership proceedings confronted with a proposal then before the Commission to merge the Northern Lines which it vigorously opposed. In the *Acquisition case*, supra, the Commission concluded that the ability of the Milwaukee to provide effective competition for the new company would not be

materially impaired, but approved the merger subject to imposition of certain conditions previously discussed. As that transaction was not consummated, the protective adequacy of the conditions imposed was not tested. Successive annual deficits forced the Milwaukee into reorganization proceedings, extending from 1935 to 1945.

Losses of traffic to competing forms of transportation, increased costs, and economic, industrial and marketing evolutions subsequent to reorganization have had its effect on the Milwaukee. To remain physically and financially able, it has vigorously pursued a program of plant improvement and modernization, new and diversified services, and operational economies. During the period 1951-1960, its capital expenditures looking to a continuous improvement program for faster, safer and more reliable and economical transportation service, approximated $248 million to improve plant and equipment. As of December 31, 1961, it owned or controlled approximately 45,642 freight cars of various types and capacities.

Milwaukee has effected substantial available operating economies consistent with service demands and maintenance of its competitive position. To accommodate high or multi-level and excess dimension shipments, it instituted construction projects to lower floors in 32 tunnels on its main line in Wisconsin, Montana, Idaho, and Washington. Its other essential services include participation in TOFC service and "Flexi-Van" service, daily commuter transportation operation in the Chicago area for which it purchased 40 new bi-level passenger cars costing approximately $7 million as a step in modernizing its suburban passenger fleet, and operation of passenger trains in Illinois, Wisconsin, Michigan, Iowa, Minnesota, North Dakota, and South Dakota, which also handle rail-highway transportation of mail for the United States Post Office Department to on and off line points in Wisconsin and Minnesota.

Other economies include the discontinuance or dualization of agency service at 275 local stations to adjust to changed conditions and public need, discontinuance of unprofitable passenger trains no longer required by public convenience and necessity, and by standardization and

close control of purchases, rigid control and application of electronic methods where feasible to reduce inventory investment, which have enabled the Milwaukee to realize substantial savings in operations. However, despite investment in improved methods, equipment and services, and improved efficiency, the postwar decline in revenue and rise in labor and materials costs have more than offset resultant savings.

That the Milwaukee now provides an essential and efficient rail transportation service serving the public in the area involved as a principal competitor to applicant railroads in the territory affected by the proposed unification is shown through evidence adduced covering testimony of six of its officials, one consultant, 111 public witnesses called by it, at least 86 of the shipper witnesses called by applicants, and 18 independent interveners representing various Federal and State agencies and by a number of associations of shippers. The primary interest of those witnesses, however, is the financial stability and competitive strength of the Milwaukee in the face of the proposed unification.

In spite of wide divergence of position expressed on the proposed unification, each of the intervening Federal and most State agencies, as well as numerous important shippers, whose shipments approximate many thousands of carloads annually, called by both applicants and interveners, forcibly evidenced the vital importance of and dependence upon the Milwaukee both at points competitive with one or more applicant railroads, and at stations and areas non-competitive with applicant railroads. They look to the Milwaukee for active, vigorous and healthy railroad competition both in rate negotiations and in quality of service to the shipping public, which they consider essential to a healthy industry.

Likewise, the Milwaukee has contributed to the national defense in its participation during the war years (and in recent years) in extensive troop and equipment movements, including those to and from the atomic energy plant at Hanford, Wash., over its lines and subsequent to the war years in rail-truck movements to and from missile bases and hydro-power dams in Montana, Washington

and South Dakota, and in providing facilities for emergency detour of trains, particularly of applicants in recent years.

Compared with applicant railroads, the Milwaukee has been adversely affected no less by market and transportation competition, and far more by decentralization and changes in marketing and transportation patterns, due primarily to the triple handicaps of rates, routes and geography.

Milwaukee's traffic, revenues, and financial position have declined over the 10-year period 1950-1960 in relation to applicants Great Northern, Northern Pacific, and Burlington. That conclusion is amply demonstrated by the data portrayed in appendix N-7.

A comparison of traffic results for the years 1946-1960, measured in revenue ton-miles, indicates that the forces that affect traffic volume, as measured by ton-mile service units, have not reduced the Great Northern and Northern Pacific volume with their lines entirely west of the Twin Cities and Sioux City, but have affected Burlington and the Milwaukee with their substantial volume in the Midwest, east of the Twin Cities and the Missouri River. Comparison of traffic results for 1947 with those for 1960, measured in cars, tons and gross freight revenues indicates Great Northern, Northern Pacific and Burlington are better insulated against reduced traffic and revenue than is the Milwaukee. Great Northern and Northern Pacific had a decrease in cars handled in 1960 under 1947 of 14.1 percent and 20.6 percent, respectively, while Burlington cars handled decreased 15.4 percent, compared with a decrease on Milwaukee of 31.4 percent. Tons handled decreased 13.1 percent for Great Northern, 16.6 percent for Northern Pacific, and 14.0 percent for Burlington, but Milwaukee decreased 29.6 percent. Despite those decreases in cars and tons, applicant lines were substantially better able to increase gross freight revenues than was Milwaukee. Great Northern gross freight carload revenue in 1960 had increased 35.8 percent over 1947, Northern Pacific 28.5 percent, and Burlington 14.7 percent, while Milwaukee's gross freight revenue increased but 6.5 percent after thirteen years of inflation.

The experiences of Great Northern and Northern Pacific with their lines entirely west of Twin Cities and Sioux City show that less of their traffic is susceptible to erosion, and despite some losses in tons and cars, that traffic has been replaced with other traffic providing a longer haul, and producing greater gross revenues. It is their participation in that long haul traffic to and from points west of Twin Cities that unification is designed to increase substantially over the entire system of the New Company.

Milwaukee's lines west of Twin Cities and Sioux City have always been light density lines and that situation has not improved over the years. A comparison of total tonnage originated during 1926 in Minnesota, North Dakota, Montana and Washington, with tonnage originated in those States in 1960, indicates that Milwaukee has been unable to improve its traffic base, either absolutely or relatively. In fact, total tons originated in all four States by Milwaukee declined from over 11 million tons in 1926 to 8 million tons in 1960. Consequently, its relative proportion of the total tons originated in those four States has also declined in 1960 as compared with 1926, from 26.2 percent to 9.71 percent to the total and the Northern Lines' proportion has increased for each of those States from 79.02 percent to 84.84 percent of the total.

Freight traffic on Milwaukee's lines east of St. Paul and Sioux City compares favorably with density per mile of road on Burlington during the period 1956-1960, but on its lines west of St. Paul and Sioux City, Milwaukee's density was only about half of that for any of the Northern Lines and only about half of that of Milwaukee's lines east of those cities. In the six states in which Great Northern, Northern Pacific and Milwaukee each operate, Milwaukee in 1960 handled a smaller percentage of total ton miles for the state than its percentage of total miles of road in that state. On the other hand, applicants handled a greater percentage of ton miles than their percentage of total miles of road.

Comparison of revenues, net income and other financial data of Milwaukee and applicant railroads, indicates

that the decline in the Milwaukee's share of traffic in the Pacific Northwest is reflected in a decrease in railway operating revenues, 1960 under 1951 by approximately $30 million compared to a decrease on the Burlington of approximately $15 million and $2 million on the Great Northern, and an increase of $1 million on the Northern Pacific. When the earnings of the Milwaukee and applicant railroads, including other income, are carried through to net income, the Milwaukee's inability to keep pace is brought into focus.

Milwaukee's evidence dealing with working capital shows a ten year comparison indicating the steadily improving working capital position of the three major applicant railroads except for the depression year of 1960. It also shows the steadily declining position of Milwaukee. The trend in working capital is particularly significant in appraising the ability of the Milwaukee to continue providing an efficient and attractive transportation service as a competitive transcontinental railroad between Chicago and the Pacific Northwest via the northern tier of states.

The net additions and betterments on the Milwaukee for the 1951-1960 period has not been as great as that of the investment on the Great Northern, Northern Pacific or Burlington, despite the fact that the miles of road owned and operated by Milwaukee exceeds substantially the miles owned and operated by any of the three major applicant railroads.

As regards net income and dividends, certain comparable statistics of record are relevant. Burlington has not experienced a deficit nor missed a dividend in 35 years. Great Northern has had only three years (1932-34, inclusive) of deficit operations, and Northern Pacific only two (1932 and 1939) since 1926. While, beginning in 1942, applicants have been able to pay increasingly larger amounts in dividends, the Milwaukee has experienced deficit operations in every year but two from 1926 to and including 1940. During the war years, its net income varied erratically. Since 1952, it has been declining. Milwaukee's first dividend in the period was in 1946. Its dividends have varied widely since, and during the

five years 1956-1960 were lower than those during the preceding five years.

The impact of the sharp decline in Milwaukee's share of traffic upon its financial position, as compared to applicants, is clear. Artificial and geographical handicaps limit Milwaukee's ability to participate in traffic to and from the growing Pacific Northwest. Milwaukee traffic volume on its lines west of Twin Cities and the Missouri River has failed to keep pace with that of its competitors for numerous reasons, including decentralization of industry, shifting of markets and areas of production, changes in marketing and transportation methods, coupled with the competitive disadvantages under which it must do business because of the geography of its lines and what it considers the monopolistic rate-making practices of its railroad competitors for traffic to and from Montana and the Pacific Northwest.

Because Milwaukee's lines do not reach Portland and an end-to-end connection with Southern Pacific, or Bieber, and a connection with Western Pacific, and because applicants and Union Pacific do not participate in through routes and joint rates with each other or Milwaukee at junctions which provide them with less than a maximum haul, Milwaukee does not and cannot participate in alternate transcontinental through routes via junctions west of Twin Cities and the Missouri River gateways to and from all major west coast terminals. Nor can it participate in north-and-south traffic between major west coast cities.

Traffic originating at Milwaukee points east of Twin Cities or Sioux City or in its connections east of Chicago, Kansas City, or other eastern and southern junctions on or east of the Mississippi and Missouri Rivers, moving westbound to points in North Dakota, Montana and west served by Northern Pacific, Great Northern or SP&S, routed for line haul delivery over those lines, must be interchanged at Twin Cities or Sioux City regardless of whether such traffic could have been carried to a more westerly junction as efficiently by Milwaukee. The routing applies not only to such traffic going to Northern Pacific, Great Northern or SP&S points not served by

Milwaukee, but to traffic in which they participate as line haul carriers to destinations served directly by Milwaukee, such as Great Falls, Missoula, Spokane, Seattle, or Tacoma. It also applies where the Northern Pacific and Great Northern, including the SP&S as part of their respective systems, are overheard or intermediate carriers between Twin Cities and Portland, Bieber, or Sumas.

Such routing restrictions prevent Milwaukee from participating in westbound movements over its lines west of Twin Cities where there is a stop to part unload or complete load at a non-competitive Great Northern or Northern Pacific point. Presently, Milwaukee, Northern Pacific, and Great Northern each can provide three stops on its single-line route between Twin Cities and its Pacific north coast terminals. But each of the three northern routes now has certain geographical advantages and disadvantages in providing a combination of stop points on a single railroad.

Although Milwaukee participates in westbound transcontinental routes with Northern Pacific and Great Northern to all points on their lines west of Twin Cities or Sioux City, and on their western connections, whether common with Milwaukee or not, from all points on Milwaukee and its eastern connections, enabling Great Northern and Northern Pacific to obtain their long haul from Twin Cities, the latter lines do not generally reciprocate with respect to eastbound traffic by routes via western junctions to points east of Twin Cities, and in no case to Chicago and points east and south thereof, affording Milwaukee a long haul over its western lines. Thus, traffic cannot go off one line for transit or stop-off at a point on another line west of Twin Cities or Sioux City. Even at some points jointly served by Milwaukee and one or more of applicant lines, there may be no track connection or interchange for local switching service.

There are some exceptions to such general routing practices between Milwaukee and the Northern Lines. Eastbound lumber can move at joint through rates via junctions with Great Northern, Northern Pacific or SP&S west of Twin Cities but those routes are limited

to traffic destined to points served directly by the lines of Milwaukee and not by lines of either of the Northern Lines, or by any other connection. Traffic routed via those western junctions cannot be reconsigned to points off the lines of Milwaukee which limits their use to shipments for which no other route is available.

Milwaukee has no transcontinental western junction routing with Union Pacific, except limited through routes via Plummer Junction, Idaho and Marengo, Wash., on traffic moving to and from Portland and the adjacent area taking Portland rates. Eastern destination territory is limited to the area north of Milwaukee's line between Omaha and Chicago and points east over cross-lake routes only. Westbound, the through route via Plummer or Marengo is open from all origins east of Twin Cities and Omaha to Portland and adjacent area taking Portland rates. The Plummer Junction and Marengo route are little used on transcontinental traffic because of limited origin and destination territory.

Westbound traffic via Marengo and Plummer Junction, with broad origin territory, has limited destination territory, and cannot be routed or diverted to California, or to Seattle or to Tacoma, or stopped or transited at any points west of Marengo on Union Pacific. Because of competitive schedules maintained by Union Pacific between Spokane and Portland through Marengo and by Milwaukee for its east-west trains via Marengo, cars interchanged at that junction are delayed approximately 24 hours.

Eastbound transcontinental traffic is restricted in volume also, because both origin and destination territory is limited. With a minor exception, no eastbound traffic may be stopped to complete load or for milling, processing or storing in transit at any point west of Marengo or north of Portland.

Because Milwaukee is unable to participate in transcontinental routes over its long haul route west of Twin Cities to and from Oregon and California on volume movements, it must hold traffic originating or terminating at points local to its lines to its own long haul and does not participate in short haul transcontinental routes

via Portland, Bieber or other California gateways. It fears that to do so would drain much of the traffic from its lines without any reciprocal long haul routes. All other transcontinental lines terminating on the north coast have reciprocal routes which permit participation east and west in both long and short haul routes via western junctions.

Traffic to or from Milwaukee's points in Montana, Idaho, and Washington requires a two or three-line haul when coming from or going beyond Longview Junction or to Oregon or California. Traffic to and from British Columbia via Sumas generally requires a three or four-line haul. Due to frequent interchanges with railroads north of Portland, service is often inadequate to attract traffic for movement over Milwaukee, except for traffic from points local to Milwaukee. Moreover, Milwaukee must obtain the concurrence of Great Northern, Northern Pacific or Union Pacific as an intermediate carrier to establish the joint rates to or from all points served by Milwaukee west of Twin Cities on the one hand, and, on the other, Vancouver, Wash., Portland and points south, which handicaps Milwaukee in fostering and preserving traffic to move over its lines.

In some instances, division of revenue between two or three lines north and east of Portland or Vancouver is inadequate to establish rates on a competitive basis from points served by Milwaukee, and when rates have been established they have produced insufficient revenue for a two-line haul north of Portland to justify solicitation of the traffic. Milwaukee is not a rate-making line from points on its railroad from Montana to points Portland and beyond because of competing interests of Union Pacific and applicant railroads.

While westbound grain rates are maintained from all Milwaukee origins Montana and west via Union Pacific or one of the applicant lines on the same basis as from origins on the lines of applicants, any adjustment proposed by Milwaukee would be predicated on other railroads' judgment. While Milwaukee's line from Montana to Puget Sound and the Columbia River port of Longview provides it with means to force rate adjustments

to the north coast group of communities, through independent action because of market competitive relationships along the coast, that could not be done with respect to traffic to or from Montana without disrupting the competitive relationship of manufacturers, millers, processors, and other transit operators along its entire line. Generally, a grain rate adjustment requires working through the whole sequence of its effect upon all segments of the grain trade from the country elevator to the final consumer. It is also true in varying degrees of any other adjustment whether the traffic involved is single line or requires a through movement beyond the lines of the carrier taking independent action. Thus, neither Union Pacific nor applicant lines will join Milwaukee in rates to, from or via Portland if they are contrary to their interests as originating or terminating carriers serving the same or equivalent territory.

That Milwaukee is not a rate-making line on the most important movements between Seattle, Tacoma and points south on its lines, such as Aberdeen, Hoquiam, Chehalis, Raymond, or Spokane, on the one hand, and, on the other, Vancouver, Wash., and Portland and Pacific Coast points south in Oregon and California, is obvious. Several shippers (6) support Milwaukee for reason that they have found Milwaukee powerless to establish any adjustment in rates to or from Vancouver, Wash., Portland and points south without concurrence of Great Northern, Northern Pacific or Union Pacific, which limits their ability to depend upon Milwaukee to provide competitive rate-making service.

The limitations on Milwaukee's routes west of Twin Cities and Sioux City, together with the fact that Milwaukee is short hauled at Twin Cities gateway on a volume of traffic, including that which originates on Milwaukee or is in its possession east of Twin Cities and destined points west thereof have combined to minimize Milwaukee's traffic potential, and with the more recent shifts in markets, areas of production and transportation patterns, have caused a decline in Milwaukee's competitive position in relation to applicant railroads. Consequently, Milwaukee's participation in substantial move-

ments of transcontinental traffic over its lines west of Twin Cities is limited to that which moves to or from a point served directly by the lines of Milwaukee and to those movements within Mountain-Pacific territory to points beyond its lines, which originate or terminate at local points on its lines not served by applicant railroads. On the other hand, the ability to participate in traffic to and from Oregon and California has been an important factor in the ability of the Northern Lines to improve their relative participation in traffic over their lines west of Twin Cities. Numerous shippers have indicated that the rate and service limitations on Milwaukee routes have prevented them from making full use of the latter's service potential, to their detriment as well as the Milwaukee's.

A factor which restricts the traffic available for movement over Milwaukee's lines and the location of industry on its trackage at terminal competitive with the merging lines west of Twin Cities, is the dual basis of switch charges collected by the switching lines on traffic interchanged for switch delivery within the terminal area. One class of switch charges is described as applicable when paid by the shipper or consignee, referred to by Milwaukee as noncompetitive switch charges which is not an appropriate designation and should be referred to as nonabsorbed switch charges and are added to the line haul rate of the delivering carrier. The other class is described as applicable when absorbed by the line-haul carrier, and is appropriately referred to as absorbed switch charges. For competitive reasons, the former class of switch charges usually apply only when the movement originates or terminates at a noncompetitive point not reached in line-haul by the switching carrier or its line-haul connections. When the line haul movement is from or to a competitive point served in line-haul by the switching carrier or its connections, the competing carrier must absorb the switching charge in order to be competitive for the traffic. Peculiar to the territory west of Twin Cities, the switching tariffs of all carriers provide that where the switch charge of the switching carrier is to be absorbed by another line-haul

carrier, a substantially higher per cwt. charge must be absorbed for exactly the same service as performed for the noncompetitive charge.

The same switching arrangements also apply on switch movements to and from transit houses, the transit point being considered the destination of the inbound movement and the origin of the outbound movement. There are certain exceptions, however, particularly on grain and grain products to or from Spokane, Seattle, Tacoma and Portland. On other traffic, however, particularly traffic moving to or from Oregon and California, industries located on exclusive Milwaukee industry tracks at such points as Spokane, Seattle, Tacoma and similar terminals common with the applicants, must pay a non-competitive switch charge in addition to the line haul rate on any movement of traffic, including any in or out movement of stop or transit cars, because all points in California and Oregon are noncompetitive for Milwaukee. Because shippers located at those terminals often have substantial business going to or from Oregon and California, they are reluctant to locate their plants on industrial property reached exclusively by Milwaukee, and in order to attract or hold industry to its trackage, Milwaukee must permit other carriers to operate over its industry tracks to serve the industry and divide that traffic with those carriers. However, the same is not true with respect to shippers locating on the industrial property of the merging carriers.

Under applicants' proposal, the improvements in service resulting from extensive capital improvements would be paid for in part by reduced operation expenses and corporate simplification, but a substantial portion would come through revenues diverted from competing lines which they either cannot avert or can only avoid or mitigate at substantial added expense to themselves. In that connection, applicants assume that interchange at Twin Cities between applicant railroad lines and Milwaukee through Minnesota Transfer will not change and that direct interchange between Milwaukee and Great Northern and Northern Pacific for industry delivery at Minneapolis will not be changed, except that such inter-

changes would be concentrated at Northern Pacific's lower yard in Minneapolis. In estimating the traffic to be gained by New Company from Milwaukee, consideration was given to the fact that the latter competes with Burlington for traffic interchanged with Great Northern and Northern Pacific at Twin Cities and with Great Northern and Northern Pacific for traffic interchanged there with Burlington. Likewise, it was considered that because of the applicants' proposed improvements in service through Twin Cities with no corresponding improvement in method of interchange with Milwaukee, a substantial number of cars interlined at that gateway would be attracted to New Company's single line for a longer haul between competitive points. On traffic not interlined with applicants or which is interlined with them but destined to or originated at a point not served by applicants beyond the interchange it was assumed that Milwaukee would remain as competitive. Milwaukee disagrees insofar as it may affect car supply.

Since Burlington serves no industries in Minneapolis, switching time from and to Northtown yard and industries served by Great Northern and Northern Pacific at Minneapolis, when moving east via New Company would be reduced from two to 24 hours, which would save as much as 40 hours on a shipment between Chicago and Minneapolis. It is not expected that the method of interchanging such cars with Milwaukee would be changed. There is a substantial volume of rail traffic which moves between Minneapolis and Chicago for which the carriers between Chicago and Twin Cities are competitive. Although no estimate was made as to the effect this would have upon other connecting lines such as Milwaukee, it is admitted that it would conceivably divert some business from connecting lines at Twin Cities.

At Twin Cities, it is necessary for Milwaukee to handle cars for Great Northern and Northern Pacific in transfers from Milwaukee's Pig's Eye yard in St. Paul, eight miles through a congested area to Minnesota Transfer for delivery into the latter's south-easterly yard. Minnesota Transfer then switches the cars, putting Great Northern cars into another yard adjacent to Great

Northern Union yard and taking Northern Pacific cars to Park Junction. Great Northern then picks up its cars at Minnesota Transfer and takes them to Union yard. Northern Pacific picks up its cars at Park Junction and handles them some four miles to its Northtown yard. The interchanges described require eight hours overall and frequently longer. The record does not show that unification will reduce the time required. However, it does indicate that cars now interchanged to Great Northern for westbound movement, would, after unification, have to be moved in switch service some four miles farther to the new Northtown yard. In the reverse direction, cars from Great Northern and Northern Pacific destined for the Milwaukee would be handled in generally the same manner as for westbound movement.

Recognizing the impact new service and schedules would have upon traffic interchanged with Milwaukee, applicants on rebuttal suggest a direct interchange rather than through Minnesota Transfer. Under the suggestion, Milwaukee would deliver cars from its Pig's Eye yard in St. Paul to the New Company's Northtown yard in Minneapolis for line-haul interchange or Minneapolis delivery and pick up cars for its own industries in Minneapolis. New Company would deliver cars to Pig's Eye yard for line-haul movement or St. Paul delivery by Milwaukee and pick up cars to be switched by New Company to St. Paul industry.

Milwaukee considers the suggestion impracticable and and subject to a number of drawbacks, all operational. Moreover, no study was made by applicants as to the feasibility of the proposal to Milwaukee, taking into account some of the drawbacks which the latter considers operational, i.e., the diversion of cars from Minnesota Transfer and the increased cost per car of remaining traffic to Milwaukee as an owner and user of Minnesota Transfer, the longer interchange movement, the rental of New Company's transfer track, and the additional cost of operating over steeper grades. But, overall, Milwaukee's objections are predicated on the basis that applicants' suggestion is not a reasonable substitute for Mil-

waukee's proposal to make interchange at what it considers less complicated western junctions. No evidence was offered to indicate that efforts or studies were or would be made by either Milwaukee or applicants looking to improve and expedite the methods of interchange via Minnesota Transfer.

Applicants' suggestion lacks the realistic approach which they have applied elsewhere herein. In substance, Milwaukee objects to the continuation of the present interchange in hopes of obtaining some consideration on the opening of western junctions. The hearing examiner concludes that continuation of interchange via Minnesota Transfer is not only feasible and practical, but subject to much improvement, and that what is needed is some hard-headed thinking and action by both parties with a view to a realistic accommodation to the problem, since both applicants and Milwaukee possess some ownership of Minnesota Transfer.

To meet the faster proposed schedules of New Company, Milwaukee would be required to accelerate its train schedules between Chicago and the west coast in order for its single-line service to remain competitive.

It is estimated that there will be a savings to shippers of $200,000 in non-competitive switch charges because all industries now located on one of the component lines west of Twin Cities will have single line service to all points on another component line west of Twin Cities, and the non-competitive switch charges which normallly would be applied to shipments from a noncompetitive point on one component line to an industry at a common point served by another will be eliminated. The reduction in revenue to applicants would also affect Milwaukee where Milwaukee and one or another of the applicant lines switch a particular industry and the other does not, but which after unification will become an industry on the other company also. In such cases, Milwaukee would normally participate in switching traffic for the component line which does not reach such an industry and receive from the shipper a non-competitive (non-absorbed) switch charge. After unification, such revenue will likewise be lost to Milwaukee, the same

as to applicant lines. Milwaukee estimates that loss of such switching revenue to it at one station, Bellingham, Wash., to be in excess of $38,000 annually.

Because of application of dual system of switching charges at western terminals, traffic which moves to or from a station served by Milwaukee and one applicant line and going to or coming from an industry served solely by another applicant line is non-competitive traffic, upon which neither Milwaukee nor the other applicant line absorbs the switching carrier's tariff charges. After unification, that traffic will change from non-competitive to competitive traffic, and while the applicant lines will lose the switching revenue accruing to one of them, Milwaukee will likewise lose revenue, for in such cases, it will be required to absorb competitive switch charges of the applicant switching line. Milwaukee estimates that the requirement to absorb such switching charges which are changed from non-competitive to competitive, would cause it to lose to New Company approximately $125,495, if it elects in all instances to absorb. In instances where the line-haul revenue remaining with Milwaukee falls below the minimum established in its absorption tariffs, the entire movement would be lost to New Company with a greater loss in revenue.

In a number of instances where two-line of combination rates exist over junctions between Northern Pacific and Great Northern or between either of them and their applicant subsidiaries, they will automatically become single factor rates by unification. While applicants estimate reduction in rates from two-line basis to single-line would result in revenue loss to New Company of $38,336, it is expected the reduction in rates would gain additional traffic to the New Company. However, where two-line rates now exist from or to competitive or cross-country competitive points, via Milwaukee and an applicant line and also via two applicant lines, single-line rates would apply via New Company, but two-line rates would continue to apply via Milwaukee and New Company. Thus, after unification Milwaukee rates in such a situation would no longer be competitive with those via New Company.

As previously indicated, applicants estimate that the public advantages of unification will permit New Company to effectively solicit for a longer haul over its system lines traffic some of which is not interlined with Milwaukee at intermediate junctions diverting from Milwaukee gross revenues of $1,040,148 with an off-set gain of $676,666, for a net total loss annually of $363,482, or sixteen hundredths of one percent of Milwaukee's 1960 operating revenues of $230,362,902. Applicants' estimate of the amount of traffic from other railroads they expected would accrue to New Company by diversion was predicated on a ten percent sample of 1955 interline abstracts, which record revenue on line-haul traffic interchanged by each of the applicant railroads with other railroads via all interchange points. Applicants applied judgment percentages to the revenue by commodity received by other railroads either interline forwarded, interline received, or interline intermediate freight applying separate percentages to some 400 different traffic movements as shown on the abstracts. The attached appendix N-8 sets forth the commodities, traffic and applicable percentages involved. The off-set of $676,666 is predicated on the assumption that certain (undisclosed) industrial traffic managers for nationwide companies would re-allocate traffic to Milwaukee and other competing roads and that other railroads would re-allocate unrouted commercial traffic and company materials in favor of Milwaukee and other railroad competitors of New Company. Applicants considered that factor in determining the percentages to be applied to longer hauls, and hence it is reflected in the estimate of $1,040,148 figure. Applicants indicate that although the advantages of unification will ultimately lead to additional carload and less-carload traffic and revenue, in that it is anticipated New Company would attract new business, it is impossible to estimate in advance the revenue gains that would be derived from the new service.

Milwaukee, however, differs with applicants' estimate asserting that its losses of gross revenues from unification would approximate $6,179,483 (net ($5,288,402) comprised of four categories of traffic diversion: Mon-

tana grain $2,581,960, forwarder traffic $1,368,846, lumber and plywood $741,195, and long-haul interline shipments $1,487,482. To the net figure of $5,288,402, would be added expense of additional trains between Twin Cities and Seattle-Tacoma $3,010,450, or a total revenue loss and added cost of $8,298,452. Its estimate compensates for a five percent reduction for switching, claims, corrections, etc. No deductions were made for the expenses which Milwaukee would save in not having to carry the traffic that Milwaukee estimated would be lost. Milwaukee's estimate was the result of an intra-company study of its own traffic that moved from, to and via the following territory: Superior and La Crosse, Wis., Minnesota, North Dakota, Montana, Idaho, Washington, Oregon, California and the bordering Canadian provinces, west to British Columbia during each of the four months in 1960. It first estimated the traffic interline with applicants, excluding grain and forwarder traffic, and the revenue loss therefrom which, because of the public advantages mentioned, would be susceptible to re-routing over longer haul routes of the New Company. The study which included Milwaukee local traffic and traffic interlined with other railroads, showed for 1960 that Milwaukee handled 1,107,237 cars of freight with gross revenues of $195,911,453, of which 493,147 cars with revenues of $113,297,118 were handled to, from and within the studied territory. During the four months study period, there were 7,892 cars with gross freight revenues for Milwaukee of $1,427,012, that were handled by Milwaukee in interline service with applicants potential for diversion to the applicant lines. On a full year basis, a potential of 24,500 cars with revenues of $4,331,691 were found susceptible to re-routing.

The other three studies (lumber, grain from Montana, and forwarder traffic, as illustrative of important traffic with a potential susceptible to diversion) dealt with the long-range effect unification was expected to have upon Milwaukee's traffic by virtue of the new network of more direct single-line routes to or via the expanded territory, which would permit more liberal use of intransit privileges. In those studies, consideration was given to the

effect of New Company's new, more direct, long haul routes, the faster train schedules proposed and the elimination of delay on traffic through Minnesota Transfer, the probable speedup in the Milwaukee's transcontinental train schedules, and the more liberal and broader use of in-transit privileges.

Taking up first the longer hauls by New Company of traffic interlined with Milwaukee, on unification New Company would be enabled to solicit its shippers to designate the New Company for maximum movement over single line to and from all points served by the component lines and from and to more distant junctions with lines serving beyond the lines of New Company. Moreover, both Milwaukee and applicants agree that the merged company probably will have a longer haul on part of those shipments than the applicants now have, but disagree as to the amount of diversion from Milwaukee. Thus, routing traffic beyond existing junctions with other lines or over new routes which bypass present junctions would obviously result.

Traffic having both its origination and termination west of Twin Cities and Sioux City in which Milwaukee participates in two-line routes with one applicant which are either competitive with single-line routes of another, or with the two-line routes of two applicants which become single line would undoubtedly be lost to the single-line route. Traffic which is interchanged by applicant with Milwaukee at Twin Cities and Sioux City would have origination or termination north and west of those major gateways. Milwaukee traffic to be susceptible to a longer haul over applicant lines must be competitive with one or more lines east or west of those gateways or competitive on both ends. That traffic would be one of three types of interline traffic (1) interline forwarded, that which originated on an applicant line and was delivered to Milwaukee; (2) interline received, that which Milwaukee delivered to an applicant line for final delivery; or (3) interline intermediate, that which Milwaukee received from or delivered to an applicant line on which the applicant line performed a bridge haul only.

Milwaukee analyzed the three types of interline traffic giving consideration to the direction and flow of the traffic, the originating, terminating and intermediate or bridge carriers, the characteristics of the route used as compared with probable new routes, the application of in-transit privileges, and whether a particular movement was of a transitory nature. It estimated that the losses on traffic which originated on one of the applicant lines and was handled interline with Milwaukee to a point competitive—also served by another of applicant lines, or which traffic would via gateways that were also competitive with the other applicant lines—60 percent; on traffic which originated on the Milwaukee at a point competitive with one of the applicant lines handled interline by Malwaukee with another applicant line—30 percent; on traffic where Milwaukee served as an intermediate or bridge carrier on traffic terminating on an applicant line when the routing of Milwaukee was competitive with another carrier—30 percent; and on traffic where an applicant carrier or carriers served as an intermediate or bridge carrier prior to interline with Milwaukee—10 percent. The percentages, however, do not add up to 100 percent of any carrier's traffic because they each apply to different traffic moving in different directions subject to different control. Consideration was also given to the fact that some classes of commodities were more susceptible to re-routing than others, but that it was not appropriate to apply varying percentages to different commodities because the movement of certain classes of traffic constantly changes and may be replaced by other commodities.

Applying the various percentage factors to the type of traffic described, of which twenty examples with supporting reasons dealing with anticipated traffic diversion were provided in this record (although Milwaukee acknowledges the examples are typical, though not representative of all the commodities, nor not so intended), and expanding the study from a four months' study to reflect a full year's business, Milwaukee estimates that by reason of the solicitation of longer hauls and the rerouting of traffic over the faster, less circuitous routes

of New Company it would lose to applicants $1,565,771 gross revenues, based upon 1960 traffic volume. That the shipments shown are not representative presents a defect in Milwaukee's evidence.

Milwaukee's percentages as applied appear reasonable, or as reasonable as attempting to evaluate the movements of each and every commodity. Milwaukee's evidence, however, does not disclose an estimate of the amount of traffic moving in any of the categories, and it finds itself in a similar position to applicants which, as previously indicated, cannot estimate revenue gains in advance. Milwaukee's roughly 50 percent increase in estimate of diversion on account of longer hauls is not detailed. Applicants point out that while estimates of percentages of diversion of traffic cannot be expected to be absolutely precise, there are limits to what can be considered a reasonable estimate and there are procedures in making the estimates which can provide checks to safeguard against wild estimates; and that the percentages used by Milwaukee far overshot the boundaries of reasonableness, and were made in rough fashion without the protection that would have been afforded by individual attention to the numerous categories of traffic. Moreover, a loss of 60 percent in eight shipments (that portion of its 20 examples of traffic which fall in this category) would certainly be large, if the total or universe of shipments was 20, but, as Milwaukee indicates, those shipments are only illustrative of typical or specific shipments of the characteristics which it describes. However, its evidence through qualified officers, with broad experience in the area, who used the judgment percentages, is convincing. Applicants admit potential diversion of $1,040,148 gross revenue whereas Milwaukee contends it is more in the area of $1,487,482 gross revenues, a difference of $447,334. The question in final analysis, comes down to exactly how much—and the hearing examiner concludes from an overall view of the record that Milwaukee has shown by substantial evidence that it would clearly suffer diversion in the area of longer hauls to the extent indicated.

Taking up next the subject of anticipated diversion of traffic to the New Company in the area of Montana grain,

no doubt unification of applicant lines will automatically change the rate-making and routing practices followed by the component lines since the turn of the century. Moreover, it will have an effect upon the movement of grain and the co-related movement of flour and mill by-products. The network of new routes will open up new markets and a new traffic pattern should emerge in the movement of grain and flour from Montana. The importance of the Montana grain situation in relation to Milwaukee's arguments for special conditions is evidenced from the fact that almost one half of all the claimed loss of gross revenues predicated by Milwaukee evolves around the one item of Montana grain.

Wheat is the principal grain produced in Montana, and is a commodity unto itself. Its production, quality, processing through country elevators and the methods of marketing it are conditions affecting its transportation not found in connection with any other commodity. In connection with the marketing of wheat, it is imperative that the transportation conditions and routing be as fluid as possible to permit the movement of whole grain and its products to as wide a consuming area as possible.

Transit privileges for milling, storing, blending and processing wheat and by-products are of paramount importance in the marketing of wheat. Transit is also important in the marketing of flour and other mill products. The privilege of reconsignment and diversion from inspection points enroute is equally important. When grain is moved from a country point it first goes to an inspection point [33] from which it may be reconsigned or divered.

The grain rate structure of the West, including Montana, is marked by highly complex market relationships between producing areas and between markets. Market

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[33] Milwaukee is actually situated at 12 of 19 stations in the area and practically represented at two others. There are only five stations, two in North Dakota and three in Washington, where Milwaukee does not have trackage to an inspection station. In Montana, with the highest number of inspection stations (6) Milwaukee is at five, and Great Northern at four and Northern Pacific at one, share five. Wilwaukee is not handicapped by inadequate representation in Montana.

relationships and mill relationships are all important to their own segment of the trade. Market relationships are important to the producers because it gives him stability in the prices he receives for his grain. They are important to the interior miller because it makes him competitive with mills in the final market. The present grain rate structure from Montana and other interior grain producing territory was prescribed by the Commission and established to apply over single lines from country origin to primary markets. The primary markets for grain produced in the West and moving east are at Head-of-the-Lakes, Twin Cities, Sioux City, Omaha, Kansas City, and other points. The rate-break principle was applied at those primary markets so that the inbound single movement to the primary market ends and the grain or grain product is rebilled at a proportional rate beyond; in other words, to eliminate transit, because it gave an advantage to the party having the greatest variety of freight bills with varying balances. Transit balances end at these primary markets and grain is free to go over any line without rate penalty.

Westbound grain from the interior moves to and through the primary markets at Seattle, Tacoma and Portland on transit balances. The rate-break principle was not prescribed at the primary markets at Seattle, Tacoma, and Portland because they were populous places and there is a substantial off-shore disposition. Moreover, the west coast markets do not have the stability of the eastern markets. All interior mills and storage and processing plants move grain in and their product out on transit balances to ultimate destination on the same through rates as the terminal mills or elevators. An interior mill can market flour from grain originated at any producing point on the same basis as a terminal mill provided it ships outbound over the same inbound carrier until it reaches a rate-break market, or, if westbound, an end-to-end junction with another railroad.

The marketing of grain from Montana origins, its pricing, and the effect rail freight rates and transit and reconsignment privileges have upon the movement of grain have been adequately explored on this record. There

are, however, certain factors which should be emphasized. The cash grain market trading in free grain (as distinguished from grain under the government loan program) sets the price in Montana. Those markets are at Minneapolis on the East and Portland and Seattle on the West, and the western markets are and have been generally higher than Minneapolis. Actual sales at the markets are the factors that establish price and this depends upon supply and demand upon a particular day. Montana, historically, has been a producer of high quality wheat which has always been in demand by millers. In the recent years the west coast market has set the price in Montana and the bulk of the grain from central Montana moves to the north coast or to Idaho, Utah and California. This has not always been so and could move the other way. The price paid to the grower is a primary factor in a grower using a grain elevator and the prices paid by elevators in adjacent areas are usually competitive. For example, the price of grain received by a grain buyer in Montana is dependent upon what is being bid either by local mills or brokers or at the terminals at Minneapolis or the west coast. The grain buyer pays the freight to the first destination and the cost of handling through an elevator. If that merchant does not have the desired grain in his own elevators it is bought from other elevators. The profit on the transaction depends upon what is left over. The ability to sell at a profit induces a grain broker to buy a particular grain and his ability to sell profitably depends upon his ability to dispose of the grain. The more places he can divert or reconsign a car the better opportunity he has to sell profitably. The same thing is true of the miller. The more places the miller can dispose of his flour and by-products the more readily he buys and in greater amount. The ability of a mill to dispose of its product is an important consideration in the movement of grain. When grain is bought by a broker in the country it is important that he be able to divert or reconsign, particularly when in long position. It is also important for any one who buys grain to have the ability to transit enroute. The transit follows the grain and whoever buys the grain buys the transit.

The more points to which a grain car can move as it progresses through various intermediate grain dealers and processors prior final distribution, the more readily it can be bought and sold. Wider routing, more liberal privileges for reconsignment and diversion, and transit privileges are of value to the station that has them and they influence the movement of grain. Occasionally, premiums are paid for grain in order to obtain specific transit privileges. The more destinations to which a transit operator can ship on an outbound transit balance the greater the need for inbound transit movements. The need for transit balances influences the value and movement of grain. When premiums are paid for grain moving eastbound, they are paid because the grain is positioned to move through a particular gateway to a particular market. It is important that grain be held in position to move through gateways. Grain is bought from country elevators and sold at inspection points either in the interior or at a terminal. It is bought on destination weights and grades but is released from an inspection point between point of origin and point where it would be in position for diversion to a destination. The right of diversion and reconsignment is an important factor at the point where it is sold. The broker must have the diversion and reconsignment privilege and the ultimate buyer of the grain needs the transit privileges. Thus, it is obvious that the privileges of reconsignment and diversion and transit are important to the marketing of grain and influence its movement, sale and disposition.

Since grain rates apply single-line to the primary markets on the East and through the primary markets on the West to end of line, the evidence indicates unification would provide new routes and new markets.

The evidence discloses the distances from representative grain shipping points to all primary markets. The merged company will be able to haul grain single-line to every primary market and gateway to the east, south, and southwest with hauls as long if not longer than to Minneapolis. To the West it will have all primary markets and two routes to Oregon and California. It will have numerous new points in Washington on a single-line

that could not be reached with grain from Montana originated on one or the other Northern Line. While there will be no change with respect to rates and routes to the principal milling centers on the north coast at Spokane, Tacoma, Seattle and Portland or to California, there will be numerous new points to which mill products can be shipped on a transit balance not previously available to one or the other company.

The evidence reflects the railroad mileage of the respective lines serving Montana. After unification, New Company will operate 72 percent of all main and branch line mileage. The importance of grain in relation to all tonnage originated in Montana, especially for Milwaukee and Great Northern is evident. Milwaukee estimates that grain produced 50 percent of all revenue from traffic it originated in Montana. Grain elevators in Montana are located on the individual lines of the respective railroads, Milwaukee, Great Northern and Northern Pacific, each elevator serving the particular grain-growing area in its vicinity. Each elevator buys grain from the farmers and ships that grain, as well as shipping the grain which the Commodity Credit Corporation has acquired from the farmers through the government program. Ordinarily, wheat moving from the farm will move to the closest elevator. In most cases, a grower can economically haul his grain only to an elevator on one of the railroads and would incur substantially increased costs if he were to haul to an elevator located on another railroad. The farmer bears the cost of trucking the grain to the elevator, either by trucking it himself or by paying the elevator for the trucking service. Indicative of the severely limiting effect of the distance from the farm is the evidence to the effect that a distance of a mile or two one way or the other is not consequential. Milwaukee competes with Northern Pacific in the Gallatin Valley and west, and with Great Northern in central Montana, either at the same station or cross-country. It does not compete with both in the same general area and Northern Pacific and Great Northern do not compete with each other. There are some elevators on the Milwaukee that are not competing with elevators on one or the other applicant lines for grain

from the same producing area. Rates are carefully adjusted at cross-country points to prevent cross-hauling between elevators.

Of 423 elevators in Montana located at some 239 points, 239 are located at 125 points served by Great Northern (four elevators served at points common with Milwaukee), 80 are located at 59 points served by Northern Pacific (two elevators served at points common with Milwaukee), 97 are located at 61 points served by Milwaukee, 7 are located at 7 points served by Burlington. Only a few of the many Montana towns that have Milwaukee elevators also have Great Northern or Northern Pacific elevators. At 52 of Milwaukee's stations, there is no elevator on the lines of applicants.

A recapitulation of origination of cars of grain in Montana for 1960, extracted from the record shows:

District	Great Northern	Northern Pacific	Milwaukee	TOTAL
Northeastern	7,105	767	—	7,872
Southeastern	—	483	648	1,131
North Central	25,743	—	2,499	28,242
Central	2,604	49	2,919	5,572
South Central	145	1,057	—	1,202
Northwestern	73	44	3	120
Southwestern	—	403	430	833
GRAND TOTAL—	35,670	2,803	6,499	44,972

Other pertinent data of record which deals with tons of freight originated in Montana in 1960, particularly wheat, barley and wheat flour, indicates that of all Montana wheat traffic, Milwaukee transported 308,989 tons, or 15.5 percent, whereas Great Northern transported 1,507,981 tons or 75.7 percent, Northern Pacific transported 147,239 tons or 7.4 percent, and Burlington transported 28,299 tons, or 1.4 percent.

More than a third of Milwaukee's total originations of Montana grain comes from Fergus County (Central District), and Milwaukee has virtiually a complete monopoly of the service to elevators in that county. Included in the above data, Milwaukee originated 2,222 cars of grain,

or over 96 percent of the total cars in Fergus County, whereas applicants originated only 76 cars. In a few other counties, however, Milwaukee's competitive position is weak, and the unification would have its greatest effect in those areas. For example, in Choteau County (North Central District), Milwaukee originated 1,833 cars of grain, whereas Great Northern originated 3,806 cars; in Teton County (North Central District), Milwaukee originated 666 cars of grain, whereas Great Northern originated 2,181 cars; in the Southeastern District (Custer, Fallon, Prairie, Rosbud, and Wibaux Counties), Milwaukee originated 648 cars of grain and Northern Pacific originated 483 cars. Milwaukee does not serve points in the Northeastern District (Daniels, Dawson, Garfield, McCone, Richland, Roosevelt, Sheridan and Valley Counties), and in Blaine, Glacier, Hill, Liberty, Phillips, Pondera, and Toole Counties in the North Central District, where the bulk of Great Northern's Montana grain traffic originates. Milwaukee's share of Montana grain traffic for 1960 aggregated 373,454 tons (6,499 cars), of a total grain tonnage showed by all Montana railroads of 2,629,-244 tons (44,972 cars). Thus, of its 6,499 cars cited only 4,277 cars appear to be susceptible to diversion.

Milwaukee concluded that the greater availability of markets to producers, elevators, brokers, and millers obtaining grain from Montana points on the New Company would be reflected in the desirability of the latter's transit billings and diversion and reconsignment privileges and ultimately in the price paid for grain moved by rail from the country elevator; that ordinarily, wheat moves to the nearest elevator in a farm truck, and a few extra miles cross-country would not deter the hauling of grain to another elevator where a more desirable rail movement can be obtained; that grain which would normally move to Milwaukee elevators cross-country from elevators on the merged lines would either gravitate to the New Company for rail movement or move to market from Milwaukee elevators by truck in greater quantity; and that wheat in a Milwaukee elevator will not be as desirable as wheat in an elevator on the New Company and would be discounted. Thus, after considering the important new markets available to producers of grain east, west and

south of Montana, the location of the inspection and diversion and reconsignment points on the merged lines and crossover routes from the producing territory, Milwaukee estimated that fifty percent of Milwaukee grain traffic from Montana origins was susceptible to loss.

Evidence of applicants through a number of grain experts and dealing with the problem of Montana grain would discount the probability of diversion indicating that intermodal competition is more forceful than rail competition. Those experts apparently concluded no change would occur, but did not contemplate the future network of applicants' lines, where the inspection points would be, or all of the new single-line routes to new markets that would be opened.

Milwaukee's estimate, however, no doubt a judgment percentage, was based on the importance placed upon the value of transit and diversion and reconsignment privileges by the grain trade and the new territory in which grain and grain products could be disposed. Because of those factors, Milwaukee concluded the demand for movement of grain by rail from Milwaukee elevators would diminish and the demand for grain over the lines of New Company would increase. Despite its estimate of anticipated diversion, Milwaukee admits that until the new pattern of grain traffic is established, it has no way of knowing the full effect of merger upon the movement of grain from its local elevators.

While the percentage of loss claimed by Milwaukee is questionable, it is clear on this record that a substantial volume of Milwaukee's presently enjoyed Montana grain traffic would be vulnerable to diversion by New Company and particularly in that geographical area where its competition is greatest with Northern Pacific, and in the broad area where potential benefits to grain shippers would be increased. While adequate support on this record cannot be found for the total of Milwaukee's claimed potential loss on Montana grain traffic through diversion, the record does support a finding that Milwaukee would sustain a substantial loss of such traffic for the reasons mentioned. The merged lines with their extensive area of coverage, offering to shippers substantially broader bene-

fits of the nature peculiar to the grain trade, would be in a most unique position to attract such traffic from Milwaukee and would, no doubt, exercise every effort to attract all available traffic.

On the other side of the coin, although not conclusive, is the indication that while the proposed fast east-west route of the New Company might aid traffic moving either to Washington or Minnesota from Montana and North Dakota, particularly the former, a similar fast service by Milwaukee could readily neutralize this diversionary potential, with the result that shippers would benefit the most by better service from both lines.

In summary, upon unification the volume of Montana grain traffic presently enjoyed by Milwaukee subject to diversion from it to the merged lines would be substantial. Although Milwaukee may have predicated its anticipated loss on a computation of the total of 6,499 cars of Montana grain traffic enjoyed in 1960, because of its peculiar position of monopoly in Fergus County, from which it drew 2,222 cars, its data should be appropriately discounted. Thus, it appears to the hearing examiner that a more accurate estimate of potential affect should contemplate such movements in respect of not more than 4,277 cars. No data is available for ascertaining the exact revnue so attributed, but on a basis of a mathematical computation, such anticipated loss should not exceed 60 percent of the figure advanced, or $1,549,176. Moreover, while Milwaukee should take some strong competitive actions, it would be faced with a variety of limitations principally in the number of routes available to it as against the merged lines, and it is likely, nevertheless, that it would be adversely affected.

Milwaukee estimates it would lose gross revenues of $741,195 annually from diversion of eastbound transcontinental shipments of lumber and plywood. Lumber and plywood originates in California, Oregon, Washington, Idaho and Montana, and a substantial number of the mills in Washington, Idaho and Mountana served by one or more applicants receive inbound lumber and veneer for milling, storing or mixing in transit. Much raw material, such as veneer, bolts and rough lumber, used by

plywood, lumber and shingle mills in Washington, comes from Oregon. The outbound product moves generally to eastern consumers. Because of routing restrictions, Milwaukee cannot participate in most movements outbound from competitive Washington points where the inbound product moves by rail from Oregon or California. Because Milwaukee cannot participate in a full line of eastbound joint transcontinental rates from points south of Longview, it is thus limited in enjoying a volume of transit traffic from competitive stations on its line. Because it is unable to participate in transcontinental routes over its long haul route west of Twin Cities to and from Oregon and California on volume movements, it must hold traffic originating or terminating at points local to its lines to its own long haul and does not participate in short haul transcontinental routes via Portland, Bieber or other California gateways, fearing drain of traffic without any reciprocal long haul routes. All other transcontinental lines terminating on the Pacific coastal area have reciprocal routes which permit them to participate east and west in both long and short haul routes via western junctions.

Milwaukee considers unification would add a large new origin territory to any mill located at a point served by one applicant line and Milwaukee, which, it feels, would only worsen its competitive position. Likewise, producers of the inbound product at Milwaukee competitive points will have more outlets for transit and stop car on the New Company, which Milwaukee feels would deprive it of more lumber traffic that moves east.

Because of these additional in-transit privileges and broader reconsignment and diversion privileges for lumber and plywood shippers using the applicants' lines, Milwaukee estimates that some of its lumber traffic, originated at points competitive with the merging lines and handled over its lines to Twin Cities and beyond either over its own line or connections other than applicants, will be diverted to New Company.

The lumber and plywood traffic involved, as distinguished from traffic interlined with applicants for which a potential longer haul is predicated constitutes a sub-

stantial volume of Milwaukee lumber traffic. Milwaukee estimates that between five and ten percent of a pool of 13,263 [34] carload shipments of lumber handled by it from competitive origins during the 4-month period would be lost to applicants. That would result somewhere in the vicinity of 2,000-4,000 cars handled annually from competitive origins. Applicants contend that little or no lumber and plywood traffic would be lost because it would be held to Milwaukee by inbound transit, allocation by a large shipper, and purchases. Further, that while it is likely a mill at a competitive point would have an increased number of places to obtain inbound transit via applicants' lines, the subject traffic, for the most part, originates at industries located on Milwaukee's tracks; many of the destination lumber yards are located on Milwaukee tracks at local Milwaukee points; part of the traffic comes from origin points where the shipper deliberately allocates its traffic among the carriers and the shipments are part of Milwaukee's allocated share; diversion to the merged lines at some of the plywood mills would mean a loss of transit billing on inbound veneer shipments, thus tying the outbound plywood shipments down to the railroad that handles the inbound veneer shipments; that one of the heaviest shipping points involved more than half of the outbound shipments are captive to Milwaukee because of a local transit situation; that stops to complete loading or for partial unloading are not widely used in the territories involved in respect of lumber traffic; that improved time in transit is not as attractive to a shipper of lumber as it is in the case of other traffic; and that where the sale is made only after the lumber is enroute, as is the case with a large proportion of lumber cars moving east, a longer time in transit is actually an advantage to a shipper. While those factors are persuasive, they are not conclusive, as the evi-

[34] Which represents 1.2 percent of total Milwaukee carloadings of 1,107,237 carloads and 2.7 percent of the total carloadings in the territory involved in the study, which would be adequate sampling, if statistically selected and representable. There is no evidence that it was or was not.

dence indicates that lumber and plywood traffic is highly susceptible to diversion.

Applicants' evidence dealing with transit in lumber disregards the fact that a mill at a competitive point would have an increased number of places to obtain inbound transit via applicant lines. That some of the traffic may have had inbound transit via Milwaukee was considered by the latter in arriving at the percentage applied. The basis of Milwaukee's estimate is not limited to losses due to increased number of stop points to complete load, but, is also based upon the broader transit and diversion and reconsignment privileges, wider markets and sources of supply and less circuitous routes which would be available to the merged lines. Thus, the hearing examiner concludes from a careful analysis of the record that Milwaukee's anticipated potential loss of lumber traffic to the extent of $741,195, as a result of unification is reasonably sound.

Next to Montana grain traffic, the largest loss of gross revenues claimed by Milwaukee over the losses estimated by applicants relates to shipments by freight forwarders and by shippers of batteries of nine or more all-freight cars of manufacturers and miscellaneous, N.O.S. The shippers of such nine-car lots are the exempt shipper associations.

At present, neither Milwaukee, Northern Pacific nor Great Northern can serve all of the important jobbing points between the Twin Cities and the West Coast with its single line. Each of their respective routes has certain geographical advantages and disadvantages. New Company will be able to combine stops at every major jobbing point in the northern tier of states except a limited number of points in southern Idaho. With only a few isolated exceptions, all combinations which can now only be made by use of Milwaukee will become available to New Company, plus many more, including the lines of Burlington. Of 180 communities in Montana, Idaho and Washington, with over 1,000 population, New Company will be able to allow its shippers to combine stops at 170, compared with 54 on Milwaukee. Prior to unifi-

cation, Great Northern could combine 88 such communities and Northern Pacific 109, exclusive of a few SP&S points. So long as present routing policies regarding junctions with Milwaukee west of Twin Cities continue, the already existing imbalance will be heavily weighted in favor of New Company.

Since New Company will be able to combine stops on less circuitous routes, eliminating delays incident to transfer or transloading for off-route points, forwarders will benefit from the ability to be more flexible in their shipments out of Chicago because of the wider routing permitted.

Chicago is a major point in assembling forwarder shipments as well as similar type movements by industrial firms. Since freight forwarder traffic and shipments moving under the general classification of all-freight are billed to stop at intermediate points for partial unloading, New Company with its less circuitous routes, its single-line expedited service from Chicago, to the West Coast, eliminating the time which would be otherwise consumed if traffic is interlined from Milwaukee at Twin Cities plus the enlarged intermediate stop-off territory available to applicants will no doubt drain a substantial volume of that traffic from Milwaukee.

Milwaukee estimates that 75 percent of its forwarder business, including that which is now interlined with Great Northern or Northern Pacific, from Milwaukee origins or its connections at competitive points, as well as that handled over Milwaukee lines west of Twin Cities, would be lost to New Company, which, predicated on 1960 revenues and traffic volume, approximates $1,440,890 annually. The percentage was applied to each of the four main categories, local shipments on Milwaukee, interline forwarded, interline received, and interline intermediate. While Milwaukee's estimate on forwarder traffic is primarily in connection with that which moves westbound, its evidence included loss on some eastbound shipments. However, such inclusion does not materially affect Milwaukee's conclusion of adverse affect.

Despite Milwaukee's emphasis on the intermediate stop pattern as being important in this connection, as well as

the more expedited service to be provided by the merged company, analysis of supporting data covering 25 categories of shipments comprising its estimate indicated it failed to show how many of the shipments disclosed by such data made intermediate stops, and at what points. That analysis, category by category, shows definitely and in detail that the merged company will not divert any portion of the Milwaukee's claimed loss in forwarder traffic. Analysis shows that on many of the shipments the operating conditions were so far from being comparable that they precluded any real possibility of a shift of the traffic to the merged company. For example, more than 50 percent of all Milwaukee's revenues involved in the forward traffic area came from interline received shipments on which applicant lines at present have no part of the haul and which, if shifted to the merged company would be delayed at least 24 and possibly 48 hours at Chicago, plus further delays at Seattle. Those shipments originate on the line of a direct carrier connecting with Milwaukee at Chicago. Interchange by that carrier to Burlington would require handling through the Belt Railroad with accompanying delays. Additionally, most of those interline received shipments go to Seattle, and the forwarder making the shipments is located on Milwaukee's facilities at Seattle, permitting prompt delivery, whereas diversion to the merged company would require switching from the merged company's train yard to interchange tracks and again from interchange track to destination, a time consuming operation. The small difference between the merged company's proposed schedule from Chicago to Seattle and the Milwaukee's present schedule would be far offset by a day or days' delay in handling such shipments by the merged line.

Other shipments in the other categories present additional facts which indicate Milwaukee's forwarder traffic would not be affected. Some shipments originate from the shipper's location in Milwaukee's freight house at Chicago, where delays which would be necessitated by switching such traffic to the merged lines at Chicago,

through an intermediate switching line, bar any real potentiality of diversion. Some move to distribution outlets primarily on Milwaukee trackage at Chicago and applicant lines have had no success in soliciting a share of such shipments. In others, unification would not change the present competitive situation. That forwarders who now make stop-offs at Great Northern points on some shipments and at Northern Pacific points on other shipments could make some shipments, after unification, with stop-offs at both Great Northern and Northern Pacific points, which would, no doubt, be beneficial to such forwarders, it would in no way shift the Milwaukee traffic to the merged lines. Arguments that Milwaukee could not match the combination of stop points available if present routing policies of applicants extend to New Company are not applicable and are without merit. Thus, the claimed loss by Milwaukee of any portion of its presently enjoyed revenues from forwarder traffic has been clearly shown to be unsupportable and is rejected.

In summary the evidence shows that of the four categories of presently enjoyed traffic, after adjustment for switching, claims, corrections, etc., based on 1960 movement of traffic, from which Milwaukee anticipates diversion and concomitant adverse effect as a result of the proposed unification, it would suffer loss of revenues in only three; interline traffic $1,487,482, lumber and plywood traffic $741,195, and a substantial portion of Montana grain traffic $1,549,176, or a total of $3,777,853.

In addition, to meet the faster proposed schedules of the merged company, Milwaukee asserts that it would be necessary for it to reduce the number of cars and tons handled in its present single daily scheduled transcontinental train to the extent that a second train daily in each direction would have to be operated between Twin Cities and Seattle, which, on 1961 data, after allowance for such extra trains as were operated, would have resulted in 857,678 additional train miles, and added cost of $3,010,450. That figure when combined with the figure representing loss of traffic to be competitive aggregates $6,788,303. Applicants do not challenge Milwau-

kee's estimate, but offered without supporting evidence a weak and unconvincing surmise that Milwaukee could meet the New Company's faster schedules without running a second train in each direction on each operating district daily.

Milwaukee's evidence shows that substantial loss of traffic revenue and increased expense will be disastrous to its financial ability to provide adequate, efficient and economical rail transportation. From a financial point of view, the proposed unification would have two major stages. The first stage of unification will immediately combine the present financial strength of applicants and subsidiaries into a total (less certain adjustments for intercompany dividends and interest), without any immediate change in Milwaukee. The second stage will thereafter bring into play and later, but even more powerful forces in terms of unification produced revenue increases to the New Company and corresponding decreases to its principal remaining competitor Milwaukee coupled with substantial decreases in New Company operating expenses and an increase in expense to Milwaukee. The financial impact of unification upon Milwaukee and its future ability to provide rail competition no doubt will be fully realized in the second stage, which must be the focal point of a realistic, long-range appraisal of the proposed transactions. An approximation of that impact may be summarized as follows: (1) Annual increase of $39.9 million in net income to New Company, (2) revenue gain of $3.77 million from Milwaukee by New Company, (3) annual increase in expense to Milwaukee of $3 million for additional transcontinental freight train. On the basis of the financial data of the railroads involved as shown of record the proposed unification would have a clear and unmistakable adverse affect on the ability of Milwaukee to sustain its competitive position. Thus, the imposition of conditions to adequately protect the competitive position of Milwaukee as an important element in the transportation picture of the area is warranted. Those conditions requested will be discussed.

To counteract the adverse effect which consummation

of the proposed unification would have upon Milwaukee, six protective conditions, outlined in appendix N-6, requested by Milwaukee to enable it to continue its transportation service to the public as an effective competitor of the merged lines, are strongly supported by numerous shippers and other public witnesses.

Significantly, Milwaukee did not retain independent transportation experts to appraise the circumstances or recommend conditions, but resorted to intra-company analysis and estimates. However, following its determination of the conditions it here seeks be imposed, Milwaukee retained the services of a prominent economist who undertook an independent analysis of the impact of the proposed unification upon the economy of the Pacific Northwest and an evaluation of the bases upon which the western lines of Milwaukee can enjoy the economic opportunity to continue as a factor in the economic progress of the area. That analysis was exclusive of any determination of cost factors pertinent herein. The results of that analysis have been given careful consideration, and where applicable are discussed.

Milwaukee condition 1 deals with opening of gateways at eleven western junctions. Under present and historic route and rate relationships each of the two Northern Lines have shipments, originating at points on their respective lines west of Twin Cities, for its long haul to the Twin Cities and interchanges it at the end of that haul with whichever connecting line the shipper designates. Under Milwaukee's proposal it seeks to require the merged company to join it in establishing new gateways for traffic so that it could short haul the merged company by taking a shipment originating on merged company west thereof at the gateway, for movement over Milwaukee's lines either as bridge or terminating carrier and similarly the merged company could likewise short haul Milwaukee by taking a shipment, originating on Milwaukee west thereof, at the gateway, either as bridge or terminating carrier. The short haul proposal applies eastbound and westbound. Stated another way, that condition contemplates that a shipper could route

traffic at joint through rates with interchange between the Milwaukee and the merged company at Twin Cities or Sioux City, or at one of the designated North Dakota, Montana or Washington junctions. On traffic terminating west of the Sioux City or Twin Cities gateway, Milwaukee proposes that routing via the requested North Dakota, Montana or Washington junctions be restricted to traffic destined to or billed for transit or stop-off at any station on the other line beyond the junction up to and including the terminal area of the next junction. A stop or transit point would be treated the same as a destination. For example, a westbound car now handled by Milwaukee to Twin Cities, thence over Northern Pacific to Pasco, could also be routed over the New Company beyond Twin Cities to Pasco, or over Milwaukee to Spokane and New Company to destination. Likewise, a westbound car now handled by Milwaukee to Twin Cities, thence over Great Northern to Spokane, with a stop at Kalispell, Mont., could be interchanged by Milwaukee with New Company either at Twin Cities or at Great Falls. The same alternate junctions would also be available to the traffic originating east of Twin Cities destined to a point on Milwaukee west thereof. New Company could interchange such traffic with Milwaukee at Twin Cities or at a western junction.

The same routing would apply on eastbound traffic. An eastbound car originating at Wenatchee, Wash., destined Chicago, could be routed over the New Company to Twin Cities, thence Milwaukee beyond, or to Spokane, thence Milwaukee beyond. Similarly, an eastbound car originating at Seattle, to stop at Libby, Mont., destined Milwaukee, Wis., could be handled by New Company to Twin Cities, thence the Milwaukee beyond, or by New Company via Libby to Great Falls, thence the Milwaukee to destination.

Under the Milwaukee proposal, it is not intended there be more than one alternate western junction on the same movement. Thus, it would permit Milwaukee to solicit its longest practical haul over its lines west of Twin Cities or Sioux City of traffic which it now must surrender or receive at those points. Correspondingly, New

Company would have the same opportunity. It would also permit a selection by the shipper of alternate routes, as his needs require, over the lines of Milwaukee and of New Company and offer shippers and receivers using Milwaukee some of the advantage of diversion and reconsignment of traffic, stop-off and transit privileges available to shippers and receivers using New Company.

At each of the points proposed as an open gateway, there are facilities which are adequate, or which can be expended, for the accommodation of interchange of traffic. The record reflects the capacity, location with respect to yards of Milwaukee and applicant railroads, and volume of traffic presently interchanged at each point.

Acceptance of Milwaukee's previously mentioned repsentation of adverse effect, supporting its request for conditions at face value, without making an independent or detailed study, has been expressed by various interveners or witnesses as their reason for supporting either some or all of the proposed conditions. In the nature of things, those supporting witnesses who so testified, except Milwaukee technical and operational employees, could not be expected to make detailed studies of the effects of unification or the effects of the conditions, nor to undertake the employment of independent consultants or experts to develop such studies. Indeed, the evidence of applicants as to the representations and requests of Milwaukee was not of record until the rebuttal period at the concluding phase of the long hearings; it was not earlier available to those who, long before, were testifying to their support of Milwaukee conditions on the basis of assumptions arising from Milwaukee's position and its presentation of evidence. However, those interveners and shippers rely on the Commission to consider and appraise all of the evidence and to determine whether Milwaukee would be adversely affected and whether the proposed conditions would have only the effects ascribed to them by Milwaukee.

A direct interest for imposition of Milwaukee condition 1, was evidenced by 38 shippers or receivers of a wide variety of commodities who offered evidence on behalf of Milwaukee as well as by a number of interveners, of which 10 were concerned with the movement of

lumber. Intervener Agriculture stresses the need of agricultural commodities for ready access to consuming and processing centers with the greatest degree of transportation fluidity and flexibility. If unification is approved, it urges requirement that not only all existing gateways be maintained but that additional gateways, including those requested by Milwaukee, through routes and joint rates be established between applicants and competing railroads to afford users adequate access to all markets and sources of supply. Several individual shippers and receivers of agricultural commodities confirmed that interest. Significant examples of such support are pertinent. An Iowa processor of soy beans (8,000,000 bushels annually), has a number of small mills and dealers in territory served by Milwaukee, Great Northern, and Northern Pacific, cannot take full carloads, wants open gateways permitting combination of a stop on Milwaukee west of Twin Cities with destination on merged lines.

A processor of animal and poultry feed with Iowa and Nebraska destinations receiving thousands of cars of raw materials annually would be enabled, with open gateways, to use Milwaukee's transit credits necessary to reach a greater number of marketing points than at present and compete more effectively in a wider marketing area. Present difficulty of shipping to points on other railroads with Milwaukee transit results in shipments moving by truck rather than by rail.

A grain merchant at Seattle moves grain on Milwaukee to Spokane, an important inspection and diversion point, cannot reach local Great Northern, Northern Pacific or SP&S points, except at high combination rates. Likewise, his grain moving to Spokane on Great Northern, Northern Pacific or SP&S cannot reach a Milwaukee local point except at rate penalty.

An Iowa livestock feeder wants open western gateways for shorter and faster routes for movement of livestock from the west. Open gateways would enable shipper to divert traffic originating on the merged lines to Milwaukee at a number of Washington or Montana

points to take advantage of routes which he believes would save time, eliminate additional feeding and minimize shrinkage.

A Minnesota shipper of livestock and meat and packinghouse products forwards many carloads of meat to Montana and Washington with stops to unload at many points and seeks open gateways to widen its markets.

Ten shippers of lumber and forest products urge open gateways would result in faster service from Pacific Northwest to Iowa, eliminate delay in interchange at Twin Cities, satisfaction of contractors' needs for delivery at team tracks nearest job sites, use of Milwaukee's routes for high-wide loads, combination of stops to part unload on Milwaukee and merged lines, access to lumber manufacturers in Idaho and Montana to sources of supply on merged lines now barred by combination rates, and thus meeting market competition located on merged lines, and permit origination of shipments on merged lines in Pacific Northwest and complete unloading on Milwaukee in Washington, Idaho or Montana without rate penalty.

Other shippers whose business is of national stature offer similar support. An Iowa manufacturer of refrigeration appliances and air-conditioning equipment served exclusively by Milwaukee expects benefits if able to stop cars at Milwaukee points with final destination on the merged lines in the West.

An Iowa steel manufacturer with plants on the Milwaukee and the latter's jointly-owned subsidiary has problems shipping excess-dimension loads to the Pacific Northwest. Steel fabrication trends towards larger size pieces which require wide clearance. On shipments to Pacific Northwest the only available wide-clearance route is Milwaukee's route via Aberdeen. Open western gateways to move shipments at competitive rates to points on the merged lines appears to be that shipper's principal reason for support.

A wholesale distributor of electrical appliances at Spokane receives 125-130 rail car shipments annually from Indiana, Michigan and Minnesota points, requiring the

widest routing by western carriers serving Spokane, cannot give Milwaukee a better share of its traffic because of the many part-unload shipments requiring stops in transit at points on one of applicants' lines not served by Milwaukee. If Spokane were an open gateway and outbound carriers' selection not dependent upon the inbound carrier used wider markets and improved sales would be achieved.

Similar problems face a major manufacturer of paper and paper products which consider present routing restrictions a handicap. It feels its present difficulties will increase unless there is more liberality accorded the shipping public to take advantage of the service and direct physical connections between Milwaukee and the merged company west of Twin Cities. It, too, looks to an improvement in ability to stop over cars for partial unloading as of more importance than ever before, particularly in sparsely settled areas served by these railroads, as opportunity to meet new markets.

A major manufacturer of household electrical appliances is likewise concerned with stop-off privileges. At present stops must be confined to a single railroad precluding a number of desirable combination of stops without a rate penalty. Of its 1,200 cars annually from Chicago and Milwaukee to the Pacific Northwest, 35 percent move in stop-off cars enabling individual dealers to receive shipments. Like other shippers on this question, rates are a primary factor.

A retail food and grocery chain (18,988 carloads in 1961 of which 6,000 cars moved over Milwaukee's lines), supports Milwaukee condition 1 as a means of eliminating delays which it occasionally encounters on shipment interchanged between Milwaukee and applicant lines at Twin Cities. It feels that if Milwaukee and the merged company could each solicit for long haul traffic west of Twin Cities there would be incentive to improve service, and it could select the carrier best suited to its needs.

A substantial Chicago mail order house (40,000-50,000 carloads annually), supports Milwaukee condition 1 as removing a routing straight jacket resulting from merged lines' insistence on the long haul west of Twin

Cities. It wants elimination of routing restrictions which confine it to a single line west of Twin Cities so that it cannot route a car with free choice of alternative services unless it pays appropriate rate penalties.

An Iowa manufacturer of power cranes and shovels emphasizes the healthy effect of competition on train service, car supply, rates, and attention to customers' needs. Since stop-off shipments are an important part of its outbound movements, and because of inability to reach Great Northern or Northern Pacific points with shipments routed west of Twin Cities via Milwaukee, it seldom favors Milwaukee with stop-off shipments. Open western gateways at competitive joint rates would enable it to select either Milwaukee or merged lines for the haul west of Twin Cities, without rate penalty.

A Wisconsin manufacturer of large and heavy machinery and equipment ships to its branches in North Dakota, Montana, Oregon and Washington. Since it seeks to ship less to its warehouses and more direct to dealers, opening of gateways would be beneficial in that Milwaukee would be able to participate in rates and routes with interchange of traffic to merged lines at points west of Twin Cities.

A large and substantial California canner of fruits and vegetables, although favoring unification, considers it important that the conditions proposed by Milwaukee be imposed as they would produce benefits which would guarantee a fair measure of competition between all lines and insure a high level of service at non-competitive stations, improve stop-off possibilities, and make rail transportation more valuable.

Milwaukee estimates that opening the gateways proposed, before allowance for offsetting reductions (of $117,723 to merged lines), would produce additional annual revenue to it of $1,512,841, and after such reductions, of $1,014,014. That estimate is based on revenue effects of imposition of the condition only insofar as it covers traffic participated in by Milwaukee based on 1960 data, and does not include any estimate of any other traffic that may be secured either from the merged

company or other roads, if its conditions are imposed. No other estimate was made available by Milwaukee.

Applicants disagree with Milwaukee's estimates indicating that from their study of Milwaukee's condition 1, the total Northern Lines' annual net revenue opened to solicitation by Milwaukee under that condition would be $97,130,370, which they consider as staggering, indicating that any such amount made vulnerable to Milwaukee solicitation and loss by the Northern Lines would require a reappraisal of the benefits of unification. It is not expected that all of the traffic in the potential pool subject to solicitation by Milwaukee for routing through the proposed gateways actually would be so routed. Factors such as the amount of business handled by Milwaukee as an originating switching line and other matters within the general knowledge of the traffic officers of applicants' lines were considered in determining various percentages of traffic of that potential pool of traffic subject to solicitation that probably would be diverted by Milwaukee if the condition 1 is imposed. The percentages represent the combined judgment of applicant lines and their officers and consultants as to probable results of imposing the requested condition 1. The percentages vary from 5 to 25 percent for the 72 classes of traffic under study, with the end result that applicants estimate that imposition of condition 1 as proposed on a per annum basis would result in gain to Milwaukee, by opening all eleven junctions, of gross freight revenue of $8,342,390, less five percent for switching and other costs, or net freight revenue of $8,148,390, or about 8.5 percent of the total potential of divertible revenue, based on 1960 levels. The estimates of the percentages of the potentially divertible traffic give full weight to the various factors that affect the likelihood or unlikelihood of actual diversion.

Applicants' estimate, realistically included this other traffic which Milwaukee failed to study for that business would also be subject to Milwaukee solicitation by the new routes. In general, it followed the same procedure as in Study VII, and included the following traffic classi-

fied as indicated: On the East, all interchange of Great Northern and Northern Pacific at Twin Cities, and of Great Northern at Sioux City. Interchange was classified (1) with Milwaukee, (2) with Burlington—to or from Milwaukee points, and (3) with other railroads to or from Milwaukee points. The data included (to or from stations and junctions served by Milwaukee) existing Great Northern and Northern Pacific interchange with railroads other than Milwaukee since, under the condition 1, the traffic would also be subject to Milwaukee solicitation by the new routes. On the west—traffic originated or terminated on applicants' lines in the territory west of the Oakes-Moorhead-Crookston-Hayes line was included and divided between stations served by Milwaukee and those not served by Milwaukee. Traffic interchanged by the two Northern Lines with connecting lines west of Twin Cities was excluded, as such routes applicants doubt could be the result of any order herein and thus such traffic would not be affected. Applicants' estimate was based on actual potential pool of traffic which would be immediately subject to solicitation by both merged lines and Milwaukee in accordance with their respective interests if condition 1 is imposed.

Excluded from the $97,130,370 pool of traffic which would be subject to solicitation by Milwaukee for routing through the proposed gateways is the amount of revenue on those shipments that accrued to other railroads which handled some of those shipments for part of their routing. For example, on a shipment routed to the C&NW or Soo for part of the haul from Twin Cities to Chicago, the revenues of those lines were not included in the above figure. Milwaukee now has opportunity to compete with C&NW or Soo and other roads for routing from Twin Cities to Chicago on such shipments but under its condition 1 it would have both the incentive to itself and another selling point to the shippers to persuade them to route the shipments all the way from the western junction point to Chicago over Milwaukee a solicitation advantage the C&NW and Soo will not have, and any gains to Milwaukee thereby would increase its gains beyond

the estimate of $8,342,390, since that figure is confined to the portion of Milwauke's gain which would be at the expense of the merged company rather than the portion that would be at the expense of C&NW and Soo.

Milwaukee recognizes the importance of that point because it expressly indicated it does not propose to join in routes or rates that would let C&NW, Soo and other rail lines east of Twin Cities and Sioux City obtain any part of the haul on the shipments which Milwaukee, under its condition 1, would be able to obtain for itself for routing to or from its own terminals through the various proposed gateways indicated. The relative importance of the additional potential gain to Milwaukee is apparent from the fact that approximately half of the traffic involved is traffic so interchanged by the Northern Lines at the Twin Cities or Sioux City with those lines other than the Milwaukee and Burlington. While those other roads would be competing with Milwaukee for those shipments on the hauls east of Twin Cities and Sioux City, the circumstances of that competition would be altered favorably to Milwaukee if Milwaukee were to obtain the ability to solicit for the long haul between Chicago and the eleven western junction points.

Analysis of the mileage distances and present and proposed schedules by the merged company and Milwaukee in respect of connecting service shows that use of six of the eleven gateways (Fargo, Linton, Judith Gap, Great Falls, Spokane, and Seattle) would produce nothing but increases in mileage from St. Paul (varying from three miles on a route via Judith Gap to 166 miles on a route via Spokane) compared with the shortest line route. Missoula and Tacoma gateways are the same with isolated exceptions. Only in southern Montana (Miles City, Lombard, and Butte) would there be reductions in distances ranging from one to 45 miles. However certain of the junctions are on the main line of both railroads and in those instances frequent service which would be provided by the merged company would result in reasonably good service westbound, although it may not be true eastbound if Milwaukee operates only one transcontinental train a day. But service at those points, while

not as good as that provided by the merged company would appear to be about as good as could be expected for any interior junction through which Milwaukee might have routes. Data in respect of connecting service at six interior junctions (Linton, Miles City, Judith Gap, Great Falls, Lombard and Butte) show the only good connections would be westbound through Great Falls and delay in connection with the others varying from ten to 22 hours, as neither company provides more than daily service and in some instances not that frequent.

Where service through any of the named interior junctions is presently inferior it could be improved by additional train service, which, in final analysis, would be an added cost the public would bear as part of the cost of the transportation system it is maintaining.

There is some doubt that service could be improved by readjusting existing schedules, since the schedules are now designed to serve the requirements of existing traffic and if readjusted to serve expected new traffic which would move via the interior junctions would be at the expense of inferior service to the traffic already being handled. A review of the shipper support for opening of the various gateways requested by Milwaukee shows little real need, if any, for the benefits expected to result therefrom. The Commission has defined, and uniformly followed certain principles in evaluating similar testimony in routing cases brought under sections 15(3) and 15(4) of the Act, and since the various sections of the Act must be applied in harmony with one another, these principles are relevant.

The term "public interest" as used in section 15(3) requires more than a showing of the desire of shippers for additional routes; it requires instead a real, specified and substantial need. Proof justifying the establishment of a through route on one commodity may not justify the establishment of through routes on other commodities via the same gateway. Cf. *Denver & R.G.W. R. Co.* v. *Union Pacific R. Co.*, 287 I.C.C. 611. The opening of a route via a particular junction for movements to or from one area does not open the junction for movements between

other areas. Cf. *Thompson* v. *United States*, 343 U. S. 549. General statements in support of routes sought do not afford a sufficient basis for a finding that the present routes are inadequate or that the public interest requires the establishment of the routes sought. Cf. *American National Livestock Association* v. *Atchison T. & S.F. Ry. Co.*, 298 I.C.C. 245, 249.

Applicants assert Milwaukee is utilizing these proceedings as a vehicle to break down the routing and gateway arrangements in the Northwest, in that the issue on the gateway condition has involved a retrial of the Milwaukee's recent unsuccessful effort, independent of these proceedings, to open the Spokane gateway. *Spokane Gateway case, supra.* In the proceedings before the Commission (300 I.C.C. 453), in dismissing Milwaukee's complaint it was found that failure and refusal of the SP&S and its system lines to join in the establishment of through routes and joint rates via Spokane in connection with the complainant Milwaukee and its connections, the same as apply via SP&S and its parent lines Great Northern and Northern Pacific, was not to discriminate against the complainant or to result in undue preference or prejudice between shipper or localities, and the establishment of such routes and rates in connection with the complainant Milwaukee was found not shown to be necessary or desirable in the public interest in order to provide adequate and more efficient or more economic, transportation. The principal point discussed at length by the Supreme Court (366 U.S. 745 in approving the Commission's decision, was that the short-haul protection of section 15(4) of the Act extends to the Northern Lines, owning the SP&S, in the relationship that exists among those lines. At page 747, the Court stated:

> Finally, it [the Commission] entered a finding that the refusal of the S.P.& S. system to grant the through routes and joint rates requested did not result in discrimination against the Milwaukee or in undue preference or prejudice between shippers and localities and further found that they were not 'needed in order to provide adequate and more efficient

> or more economic transportation.' 300 I.C.C. 453. The District Court held that the findings of the Commission were supported by substantial evidence and affirmed its ruling as to the application of §§ 15 (4). 182 F. Supp. 81. We note probable jurisdiction. 364 U.S. 860. We affirm the judgment.

And the Court's discussion of the short-haul protection of the Act in relation to the Northern Lines' routes and rates included the following, at page 753:

> The short-haul exception of §§ 15(4) originated in the Mann-Elkins Act of 1910. 36 Stat. 539, 552. The crucial words 'common management or control' were not defined and the subsequent legislative history of the provision is of little assistance to our inquiry. However, the overriding purpose of the Congress seems to have been the protection of the traffic of the controlling line. As Senator Elkins, a coauthor of the measure, stated to the Senate, the exception 'is one which has always been recognized in the transportation business of the country. The road that initiates the freight and starts it on its movement in interstate commerce should not be required . . . to transfer its business from its own road to that of a competitor . . . when the commerce initiated by it can be as promptly and safely transported . . . by its road as by the line of its competitor.' 45 Cong. Rec. 3475-3456. The same reasoning would equally apply here. Moreover, the Senate Report on the provision emphasizes the same purpose.[5]
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> Unless the long haul of the railroads, under joint management and control as interpreted by the rate-making cases, is protected by §§ 15(4), the advantages which the Commission assumed existed, i.e., economies of operation, will be taken from them.

The Court's footnote 5 reads:

> It would seem to be unreasonable to empower the Commission to require a railroad company having

> a line of its own between two designated termini to allow a portion only of that line to be taken and linked up with other lines for the purpose of creating another through route in competition with it, thus depriving it of the natural advantage of possessing a direct line between the termini . . .' S. Rep. No. 355, 61st Cong. 2d Sess, 10.

These considerations apply with equal force to all eleven of the new gateways proposed by Milwaukee. There are no service or operating factors which make desirable the opening of the named gateways. The evidence shows that service would be no better and, at some points, would be worse. The western gateways sought by Milwaukee would virtually atomize the existing traffic pattern of applicant lines and break up the flow of traffic over those lines. The record shows that each of the applicant lines maintains an efficient integrated transportation plant designed to interchange traffic with other lines over established eastern gateways. Joint through routes and rates via the existing gateways are designed to provide maximum incentive to the carriers involved, which promotes healthy transport adequate to meet the needs of commerce which it serves. The gateways sought by Milwaukee would place the latter in a position to short-haul the New Company on substantial transcontinental traffic, place New Company in the unenviable position of having to maintain adequate plant facilities and equipment not only to serve its traditional long-haul routes but to originate or terminate traffic via the many short-haul routes created if the gateways requested are established. Thus, the high-cost operations (origination or termination of traffic) would be imposed on New Company, with Milwaukee deriving the benefit of handling the traffic in long-haul main line service in through trains. The incentive for the construction and maintenance and further improvement of plant, facilities, rolling stock and equipment appears to be the reason the Congress has always protected the long haul of the American railroads, subject to certain limitations, and the benefits, in the long run, accrue to the shippers who use the railroads' service, since the

railroads depend on the shippers or receivers of freight for their existence. In short, the interior or western gateways sought by Milwaukee would permit the latter to utilize the plant and facilities of the New Company as a short-line connection of Milwaukee. The opening of gateways where no clear and substantial public need exists would not be consistent with sound, adequate and efficient transportation service. Clearly, on this record Milwaukee's request for imposition of a condition requiring the opening of the eleven named gateways, should be rejected, and the hearing examiner so finds.

Milwaukee condition 2 deals with entry to Portland over trackage of the merged lines, permitting Milwaukee to operate its trains between Longview Junction and Portland on reasonable terms, including the equal right to serve all present and future industries at intermediate stations in Oregon and Washington. Such trackage rights as requested contemplate use of New Company's facilities at Portland necessary for the switching of traffic to other railroads and industries, and the maintenance by New Company of Portland as an open gateway with Milwaukee on the same basis as with other connecting carriers in accordance with the non-discrimination provisions of section 3(4) of the Act. That would require that the other lines at Portland (Union Pacific and Southern Pacific) also deal equally and fairly with Milwaukee on the same basis as with their other Portland connections with respect to interchange of traffic, the establishment of joint rates, through routes, and related matters. Cf. *Dixie Carriers* v. *United States*, 351 U. S. 56, 58, 60. However, Milwaukee concedes that orders could not be issued against Union Pacific and Southern Pacific in these proceedings.

Portland is now served by Union Pacific, Southern Pacific, and by Northern Lines and their subsidiary SP&S. Following unification, for traffic to and from points south and east of Portland, including transcontinental traffic, three railroad systems would be in active competition with each other. For traffic to and from points in the Northwest, including Twin Cities, New Company would be in active competition with Union Pa-

cific and its connections. Those connections include Milwaukee (via the Marengo interchange) and, through connections with the Canadian Pacific and its subsidiary Soo, competes for shipments into North Dakota, Minnesota and points east, including Chicago and points beyond. For traffic to and from Tacoma and Seattle, the New Company would face the competition of Union Pacific over the latter's direct routes. For traffic to and from points north of Seattle, such as Vancouver, B. C., the New Company will be competing against the Union Pacific-Milwaukee route, including Canadian connections with that route.

Imposition of the requested condition would enable Milwaukee to participate as a single-line carrier between all points on its lines north and east of Longview, on the one hand, and, on the other, Portland, Kalama and other intermediate points, with the same ability to provide faster service and through rates as New Company. There would be also available an alternate transcontinental route, competitive with New Company, between Chicago, Portland and intermediate points, and Milwaukee would be enabled to establish rates independently of its competitors to and from such points as Portland and Vancouver. Likewise, Milwaukee would be enabled to negotiate rates with connecting lines at Portland to, from and via Oregon and California, broaden the market and transit points for shippers and receivers on its lines and the lines serving Oregon and California; would permit transit and stops to complete loading or part unload at all Milwaukee points north and east of Portland on traffic originating south thereof moving over Milwaukee. In the reverse direction, there would be transit and stops in Oregon and California for traffic originating on Milwaukee moving to points south of Portland or south and east of Portland via California gateways.

Milwaukee's request for entry to Portland with access via New Company's tracks and facilities to industries and other railroads in Portland has precedent. Cf. *Acquisition Case, supra.*, wherein the Commission approved the unification therein, on the condition, among others,

that applicants give suitable assurance that Milwaukee, upon fair terms, may have access from Spokane to Portland and intervening points, over the lines of SP&S. That transaction was not consummated, and thus, the condition was not put into effect. Milwaukee's request herein involves trackage rights over only 47 miles between Longview Junction and Portland as compared to 380 miles of SP&S trackage between Spokane and Portland, authorized in the *Acquisition Case, supra.*

The evidence shows that the population of the West has grown twice as fast as for the United States as a whole during the past decade and more than 2½ times as fast as the three great regions—Northeast, North Central and South. Most of this growth has been in California, Oregon and Washington. Growth of West Coast markets resulting from population increases among other things, places importance on the north-south freight movement in the area. Moreover, the largest volume of rail freight moves eastbound, lumber, minerals, grain and fruit making up the bulk of the commodities. Growth in westbound tonnage movements will occur as the population growth of the West and for export creates more markets for eastern manufactured goods.

Washington and Oregon depend upon forest industries and agriculture as their economic base and largest source of income. Agriculture and forest industries are dependent primarily on the railroads for movement of products to national markets. The trend for the Pacific Northwest is to grow in population, production and consumption in each decade remaining in this century more than it has ever grown in the past. That outlook underscores the region's need for and its ability to support continuing intro-modal competition. Neither motor nor water transportation can provide effective competitive service for the long haul, raw material, mass commodity movement economy of the Pacific Northwest.

There are no operating obstacles to the extension of Milwaukee's service into Portland over the line of New Company from Longview Junction. Applicants concede that the line, which is double tracked and maintained to

the same standards as the line north of Longview Junction over which Milwaukee presently operates under trackage rights from Northern Pacific, will accommodate without difficulty additional trains of Milwaukee from Longview Junction south to Portland. At Portland, Milwaukee proposes to terminate and start its trains at Guild's Lake Yard and to interchange traffic there with Northern Pacific Terminal Company for handling to and from Portland industries and other railroads. There is ample room for expansion of this facility if it should become necessary. As alternatives, other facilities available can be reached over the lines of New Company, such as Hoyt Street Yard which New Company would abandon, at least in part, or the Doane Street Yard. Milwaukee has an option on vacant land in Portland, ideally located and suitable for use as a terminal for its engines and cars and for interchange of traffic.

Numerous shippers and receivers of freight and others support Milwaukee's requested condition 2, and the nature of their evidence leaves no doubt that access to Portland by Milwaukee would not only be in the public interest but would satisfy several urgent public needs. The reasons advanced for such support fall into four categories (1) the need to make Milwaukee an effective rate-making line on traffic to, from and via Portland, (2) the creation of another transcontinental route via Portland for stop-off traffic, (3) the effect which Milwaukee operation into Portland would have on service and/or car supply, and (4) the apprehension over elimination of rail competition which would result from merger of the three applicant railroads serving Portland. Shipper support was evidenced by 72 shippers or receivers of a substantial volume of freight covering a wide variety of commodities, a Washington chamber of commerce, and seven independent interveners (a traffic and rate bureau, several substantial shippers, a grain association, and Agriculture). Moreover, the keen concern manifested by the numerous shippers, individually and collectively, for entry by Milwaukee into Portland points up the importance of this condition. Significant examples of such shipper support warrant discussion. A small Montana

grain shipper (200-300 cars annually) is completely dependent upon Milwaukee for car supply has found Milwaukee powerless to make westbound grain rate adjustments to meet the inroads of truck competition in its area. It has had to provide truck loading facilities at its elevators to remain competitive, although it prefers to use rail service, but asserts that if Milwaukee is to remain competitive it must be able to act independently of the other railroads in making rates and providing service to the important tidewater market of Portland.

A Montana grain company with 35 elevators on Milwaukee and Great Northern (1,500-2,000 cars of grain annually) finds lack of direct entry by Milwaukee into Portland reduces the effectiveness of that line in rate negotiations, and that present arrangement automatically forces concurrence of the intermediate line (Union Pacific) in any divisions and routing establishment between Milwaukee, on the one hand, and, on the other, Southern Pacific and other California lines. That Northern Pacific and Great Northern, serving in part somewhat different grain producing areas of Montana, with Milwaukee, provides it with a measure of independence on rate matters and after merger Milwaukee would be its only alternative. To be effective, it must act without concurrence or dominance of the merged lines, and be able to negotiate rates to Oregon and California without concurrence of intermediate lines.

A Washington flour miller (11,396 carloads of grain and grain products annually) urges Milwaukee's condition 2 as beneficial by its increased effectiveness in rate negotiations. Shipper is at a disadvantage where Union Pacific has been reluctant to join in rate adjustments of grain from Montana and Idaho via Seattle and to California via Portland.

A California sugar refiner (15,000 carloads annually) urges the presence of another independent rate making line connecting Washington with the south, via Portland as more necessary following consummation of unification.

A large producer of paper and paper products and wood pulp with a major portion of its production in the

Pacific Northwest expresses a vital interest in urging Milwaukee as a strong competitive force in the railroad group serving the Pacific Northwest. Applicant lines are important to it, and it favors unification, but feels strongly that upon consummation Milwaukee requires the strengthening through imposition of conditions. It points out the necessity of competitive rate adjustments from the various Northwest mills via all railroads including Milwaukee to keep its mills in the area competitive. Time in transit via interchange at Chehalis limits its competitive opportunities, and Milwaukee's opportunity to solicit traffic south of Seattle.

A food and grocery firm receiving shipments from California for delivery at Milwaukee local points in Seattle encounters continuous and serious delays of at least two days on shipments because of switching time requirements for completion of loading. If Milwaukee could take its cars at Portland for spotting at Seattle on day of arrival, it would permit departure eastbound the same evening.

Other shippers and shipper associations evidencing strong and determined support point out that stop-off cars to serve Portland are the rule on a vast amount of general merchandise traffic; and that this has been increasingly important in recent years as railroad carload minimums have been increased under incentive rates while shippers desire lower inventories, with the result of increase in stop-offs involving Portland with Seattle, Tacoma, Spokane and other points.

Milwaukee's service to Portland utilizing the connection Union Pacific at and via Marengo is one to two days slower than any other competitor on transcontinental freight. For three years an intervener shipper association has used the Milwaukee-Union Pacific route to Portland, via Marengo, and never has service been better than one day longer than routes via Union Pacific or applicants. Direct access to Portland by Milwaukee would enable its 30 members in Portland to obtain competitive service they cannot obtain without withdrawing all their business from Milwaukee.

Lack of access to Portland by Milwaukee has caused rate and service handicaps to several Washington lumber shippers. The California market is becoming more important to mills in its area, and there are no routes to the east via Oregon and California from its area, which prevents sales to mills at Vancouver, Portland and points south for remanufacture in transit on eastbound movements which privilege is available to competitors in western Washington. More favorable rates, additional routes, and faster transit is expected by entry of Milwaukee to Portland.

The shortage of wide-door box cars is the subject of complaint to the railroads, particularly by shippers in Oregon, now the principal lumber producing state in the Pacific Northwest. With Milwaukee access to Portland, shippers in Oregon would benefit by the increased car ownership of that intervener. The critical need for car supply (including double-door and compartmentalizer cars) of Milwaukee at points in Washington, south of Longview Junction and Oregon is confirmed by the evidence of five substantial shipper and shipper associations (in excess of 30,000 cars annually) in southern Washington and Oregon supporting Milwaukee's request for entry to Portland as a means of improving their car supply.

Apprenhension over the elimination of rail competition which would result from unification of the three railroads serving Portland prompts many shippers to favor the entry of Milwaukee into Portland as an alternate competitive service to replace competition lost by unification. A Montana flour miller (5,000 carloads annually), is concerned with effective and strong competition between rail carriers in rate negotiations and quality of service provided the shipping public. California is a deficit milling area and the most important flour market for this shipper. It is now served by two railroads with direct access to Portland and connecting lines beyond. Unification would leave only one line having direct connections to California via Oregon gateways, unless Milwaukee is permitted access to Portland. Milwaukee

service from Montana to Oregon and California points is provided via intermediate carrier Union Pacific whose interests often conflict with those of Milwaukee, and such arrangements cannot provide strong competition for merged company on a service or rate-making basis for movement of grain and grain products Montana to California and Oregon.

Preservation of rail competition is also expressed by a large chemical firm (28,000 carloads inbound and 51,000 carloads outbound annually). A recently constructed plant on a site located between Longview Junction and Portland selected because of competitive rail service afforded by three applicant railroads is faced with no rail competition on unification. Permitting Milwaukee entry to Portland would enable shipper to retain competitive service and would afford competitive routes now available but which would be eliminated by unification as proposed.

A number of independent interveners supporting Milwauke's request for entry to Portland do so for various reasons; some consider they are seriously penalized because there is no direct Portland gateway now via Milwaukee; others consider present service very slow and undependable via Chehalis and the Union Pacific connection; and others fear one-line monopoly in the area.

Milwaukee estimates that its entry to Portland would produce additional annual gross freight revenues to it of about $6.1 million, which figure includes a gain of $868,207 from longer haul traffic in which Milwaukee now participates; with corresponding loss with respect to the latter category of traffic spread over 18 railroads, of which Union Pacific's share would be $44,347 and the applicant lines' share would total $383,592. Milwaukee's figure is admittedly essentially a judgment figure, but its judgment is that of experienced operating officials. That estimate is based on revenue effects of imposition of the condition only insofar as it covers traffic participated in by Milwaukee based on 1960 data.

Applicants disagree with Milwaukee's estimates, indicating that from their study (prepared by their consultants), of Milwaukee's condition 2, the total revenue

opened to Milwaukee's solicitation under that condition, if imposed, would approximate $58,765,070 annually, of which $9,068,206, would be gained by Milwaukee at the expense of applicant lines. Included in applicants' estimate is a degree of duplication ($700,000), if the open gateway condition is also granted. While applicants' estimate is the result of a detailed effort to approximate, to the best extent possible, the foreseeable effects of the proposed condition, its consultant indicated that it represents more judgment and less fact than does its other studies prepared herein. Applicants' estimate exceeds Milwaukee's estimate of its gain by approximately 40 percent, or $2,300,000.

Applicants regard 40 percent of Northern Pacific's traffic, now moving via Portland, safe from Milwaukee's solicitation because of the close association which the merged company will have with Southern Pacific. Of the remaining of the $58 million-plus potential revenue from Portland traffic which applicants contend would be susceptible to Milwaukee's solicitation, the loss estimated by applicants would approximate 13 percent. Hence, applicants' lines, even under its own generous estimates of gain by Milwaukee would be able to maintain a strong hold on well over 90 percent of the traffic to, from or via Portland which they now enjoy. Thus, it appears that imposition of the Milwaukee condition 2 would have but a minimal effect on the merging lines, enable Milwaukee to actively compete in transcontinental traffic, and, no doubt, improve the competitive atmosphere.

However, while some of the traffic in the total pool susceptible of Milwaukee's solicitation, if entry to Portland is granted, is now competitive in that Milwaukee can solicit it for the route by which it interchanges traffic with Union Pacific at Marengo, by reason of that interchange, the service on that route is not as good as can be or as furnished by the Northern Lines. With entry into Portland applicants admit Milwaukee will be more competitive.

Applicants argue that the general considerations advanced by Milwaukee as to why it desires a broadening of

the territory served by it, are those which plainly exist today, have existed for years, and will continue to exist if unification either is not approved or is approved subject to conditions so onerous that applicants would decide they should not consummate the mergers and lease, and that those circumstances being ones which do not arise from the effects of the proposed transaction are therefore ones which should not be accepted as justification for the granting of the sought improvement in Milwaukee's position at the expense of applicants. Applicants must certainly recognize that such authority as may ultimately be granted herein is permissive only, and that such permission may lawfully be made subject to such terms and conditions as the Commission may find are consistent with the public interest.

It is significant that the only railroad besides applicants which opposes Milwaukee's entry into Portland is Union Pacific, notwithstanding other railroads with which Milwaukee competes for Portland traffic including interveners Southern Pacific, Santa Fe, C&NW, Soo, Rock Island and Western Pacific. As of December 31, 1960, Union Pacific's investment in operating property in the Portland area approximated $21 million. It also has a 40 percent interest in Northern Pacific Terminal Company and a one-half interest in Portland Traction Company, a short line operating in the Portland area. Its subsidiary Union Pacific Motor Freight Company has a substantial investment in equipment in the area and performs local pickup and delivery service in the area. Its investment in main line between Portland and Marengo, 310 miles, approximates $67 million. In conjunction with the stated investment in the Portland area Union Pacific employed an average of 1,845 persons in 1961, with a payroll of $11½ million, paying ad valorem taxes on its Portland properties approximately $340,107.

It contends that with the decline in rate of return from transportation service from 1958 (4.13 percent), to 1960 (2.91 percent), the impairment of earnings by loss of substantial traffic to Milwaukee would have a serious effect on its well being, and result in a dangerous with-

drawal of revenues from the rail carriers already giving the community adequate service. Its system railway operating revenue for 1960 was $494,184,464, with corresponding net income of $65,312,512, of which railway operating income comprised $32,835,294.

Union Pacific argues that Milwaukee's entrance into Portland would only serve to dilute the volume of traffic now being handled by other carriers, and that Union Pacific would lose not only the traffic presently interchanged with Milwaukee at Marengo but also transcontinental traffic handled by Union Pacific by its long haul and direct routing via Council Bluffs to and from Portland. Union Pacific estimates that potential loss to it by virtue of imposition of Milwaukee condition 2 would approximate $1,100,000, being the amount of revenue derived from traffic interchanged with Milwaukee at Marengo during 1960. It admits, however, that it would not expect to lose all of that traffic. Likewise, it made no study to determine the loss, if any, of traffic now handled via its long haul route between Portland and Council Bluffs. The Marengo gateway traffic, over which Union Pacific expresses concern, is not traffic which it eagerly seeks, and it is unwilling to remove the territorial restrictions on that gateway, which nullifies its effectual use.

Union Pacific's interchange at Marengo with Milwaukee in 1960 approximated 18 cars daily, an average of about 12 cars delivered by Milwaukee to Union Pacific and 6-7 cars received daily, only two were destined to points east of Twin Cities. About one-third of the traffic delivered by Milwaukee for interchange at Marengo originated west of Minneapolis, most of which was grain from Montana; the traffic originating east of Twin Cities being mostly forwarder traffic. Thus, the effect entry by Milwaukee to Portland would have upon Union Pacific would be nominal and not substantial.

The merging of three of the applicant lines serving Portland would obviously reduce rail competition to and from this important point leaving only Union Pacific to provide a limited competitive service via its lines to Seat-

tle and Spokane. Access to Portland by Milwaukee would provide a connection between Southern Pacific and Milwaukee which would assure healthy competitive service to, from, and through the Portland gateway. The importance of Portland-Vancouver area as a rail traffic center and population center requires such service. Moreover, the competition provided by Milwaukee to and from Portland should prove to be beneficial to shippers and receivers in the Portland area and inspire the performance of a higher degree of competitive transcontinental service.

In summary, the hearing examiner concludes that the arguments in opposition to imposition of Milwaukee condition 2 are without merit, and that imposition of Milwaukee condition 2 as a condition to approval of the unification proposed is warranted by the facts of record as appropriate to the maintenance of a sound and economic transportation system in the Pacific Northwest, and consistent with the public interest.

Milwaukee condition 3 deals with its request for trackage rights between Renton and Snohomish and between Everett and Bellingham. The four communities named in the proposed condition are on the present route of Milwaukee between Chehalis and Longview Junction to the south, and the international gateway at Sumas, to the north. Milwaukee's participation in traffic between British Columbia via Sumas and points in its line between Sumas and Bellingham, on the one hand, and, on the other, points south of Longview Junction, is limited by the frequent interchanges to a very slow service route. Shipments received by Milwaukee in interchange with the Canadian Lines are handled over Milwaukee's separated segment of line from the border south to Bellingham at which point Milwaukee cars are handled over the Great Northern in Great Northern trains to Everett, pursuant to an agreement between Milwaukee and Great Northern approved in Docket No. 31956, *Railroad Freight Traffic Between Everett and Bellingham*, 298 I.C.C. 520 (1956). Before World War II Milwaukee had operated a car barge service between Bellingham and Seattle to haul its

cars between those points. From Everett, Milwaukee operates its trains over its own line through Snohomish and Cedar Falls (around Seattle), to Renton, Tacoma, and Chehalis (Milwaukee's interchange point with Union Pacific or the Northern Lines on traffic to or via Portland). The northbound operation is similar. Milwaukee has never operated over applicants' line between Renton and Snohomish nor have Milwaukee cars been handled over that line. The resulting service is slow (compared with the schedule of 15½ hours between Portland and Sumas by Northern Pacific and the equivalent or better schedules of Great Northern from Vancouver, B. C. via Blaine), and although Milwaukee finds it difficult to compete effectively for traffic, particularly north-south traffic so interchanged, the operating conditions on its route north to Sumas and from Sumas to points in the United States have not kept it from obtaining a fair volume of traffic in its competition with the Northern Lines.

Following unification, Milwaukee will be the only competing line extending north from Seattle with operations, though segmented, to the Canadian border.

The trackage over which Milwaukee seeks rights between Benton and Snohomish (35.7 miles), is 39 miles shorter than its own route between those points via Cedar Falls, and, together with rights over the trackage between Everett and Bellingham (65 miles), would enable it, by adding a new train, to offer a schedule comparable to the 15½ hour schedule of New Company between Sumas and Portland. The new train would be faster than Milwaukee's present schedule which is slower than the present schedule of the applicants.

The density of traffic which applicants anticipate over the merged lines between the points over which trackage rights are sought affords no problem with respect to accommodation of Milwaukee trains.

Milwaukee estimates that imposition of its condition enable it to increase its revenues by approximately $1,554,000 annually. While its estimate is not broken down between northbound and southbound cars or commodities

it indicates that at Bellingham there are 1,300 cars involved; at Everett, 750; and on the Canadian traffic, 6,000 cars. Milwaukee would be required to incur offset expenses aggregating $1,996,206 (which includes rental charges for use of the merged company's Bellingham-Everett, Snohomish-Renton, and Longview Junction-Portland lines, train mile costs of $4.06, additional yard shifts at Tacoma, train handling costs at Portland, and interest on new facilities), annually in the operation of a new train between Portland and Sumas to accomplish its purpose in attracting $1,554,000 annually of revenue of applicants presently enjoyed. Milwaukee's evidence dealing with the economic or uneconomic character of its proposed train has some shortcomings. It expects to increase its revenues on 8,050 cars annually but admits to a need of 18,250 loaded cars annually to make the new train compensatory. It cites no source but applicants, and that rather weakly, which, if correct, would double its estimate of diversion of $1.5 million. There is no evidence as to how much revenue Milwaukee now derives from its traffic on its present operations between Sumas and Chehalis (its interchange point with Union Pacific on Sumas traffic to, from or via Portland), and there is some question as to whether the new train operation would be on a compensatory basis.

The public concern on the subject of trackage rights sought by Milwaukee over the segments and between the points indicated by Milwaukee over the segments and between the points indicated extends beyond the United States to Canada. Although the Province of British Columbia, intervener, offered evidence, subsequently discussed, in support of the applications, it qualified its advocacy on the basis that maintenance of competition at the Sumas gateway is of great importance. It makes its position in regard to the Sumas gateway clear in that since Milwaukee already is established at Sumas, the most logical approach would be to encourage its continued operation and development, and indicates that it is opposed to a rail operation solely dependent on barge service. The substance of the Province's position is that it is

fearful that Milawukee, upon unification, would revert to a barge service, and it urges that the present competition at Sumas be preserved and that such competition can only be preserved if the present operating arrangements between Milwaukee and applicants are continued and made permanent and all rates and routes, including those presently established by and with Milwaukee are continued and made permanent herein, as essential to the maintenance of competition at the Sumas gateway.

A number of shippers and receivers of freight support Milwaukee's request for imposition of condition 3. A large paper company ships newsprint paper from Duncan Ban and Ocean Falls, B. C., to the United States, and its subsidiary ships lumber from Fraser Mills, B. C., to the United States via Great Northern direct and via Sumas over the line of some of the Canadian carriers in conjunction with either Milwaukee or Northern Pacific and finds the competitive route to Sumas to serve its British Columbia points vital to the preservation of competition. Other shippers of a wide variety of commodities, principally lumber and related products, grain and processed foods offered strong support seeking improved and competitive service. Their evidence also showed generally the present and future availability, without condition, of a number of routes to and from the territory beyond Sumas, but was significant in relation to use of Milwaukee's service, as a strong and necessary competitive force.

In summary, the hearing examiner concludes that Milwaukee's condition 3 has merit, and should be imposed in any authorization herein, and the recommended findings will be so conditioned. The strengthening of Milwaukee in the considered area by condition 3 will contribute much to the improvement of railroad service in the area and should be of inestimable benefit to shippers and receivers.

Milwaukee condition 4 deals with handling of traffic of Milwaukee from, to and through Billings as a station on the Milwaukee which the latter seeks as creating a new source of traffic. Billings (Pop. 52,851), is one of the two most important cities in Montana, and is a growing manufacturing and jobbing point, serving an extensive marketing area. Although the Milwaukee serves

the area north of Billings, it has no line into that point. When Milwaukee built its railroad, Billings was quite small and Milwaukee bypassed it. Served in the meantime by applicants' Great Northern, Northern Pacific and Burlington, (principally in low-rated sugar beets, limestone and oil to the sugar and petroleum refineries), and also by motor carriers, Billings has grown to be the second largest city in Montana.

Between Billings and many origins and destinations on Milwaukee competitive with both Great Northern and Northern Pacific, Milwaukee does not participate in any through rates. The same is true with respect to Billings' traffic originating or terminating on any West Coast connection of Milwaukee. A large number of cars move between Billings and major cities and areas in the West. The greatest percentage of cars originating at West Coast cities with stops or final destination at points served by Milwaukee in Washington and Montana include a stop or final destination at Billings. Westbound, many cars from Minneapolis stop at Miles City, Billings and points west.

Milwaukee's proposal contemplates that cars stopping off at Billings be returned to Milwaukee at Judith Gap, Lombard, or Miles City, according to which is in the flow of traffic, and not backhauled to the original point of interchange. The interchange facilities available at Miles City, Judith Gap and Lombard are advantageously located to permit with some modification interchange of traffic to and from Billings. However, mileage distances are significant.

Under Milwaukee condition 4, applicants would be required to continue to do the transportation work of switching to and from the Billings' industries and of hauling the inbound and outbound cars to and from the nearest junction points with the Milwaukee, namely; Miles City, 147.6 miles east from Billings; Lombard, 184.5 miles west from Billings; and Judith Gap, 114.1 miles away to the north.

Milwaukee estimates that more than 18,000 cars originate or terminate at Billings each year, and that with Billings as a station on the Milwaukee, it should be able to obtain 1,500 cars annually which originate or termi-

nate at Billings and 1,000 additional cars which stop at Billings on movements east and west through Billings. In terms of dollar amounts, Milwaukee estimates a gain of about $1.2 million annually in revenues diverted to it, half of which would come from the 1,500 cars originating or terminating at Billings; the other half from the 1,000 through cars. Out of the $1.2 million of revenues that Milwaukee estimates it would gain under condition 4, only $62,506 ($35,613 from traffic now handled by Northern Pacific, $9,710 from traffic handled by Great Northern, and $17,183 from traffic handled by Burlington), would come from longer haul on shipments on which Milwaukee now participates in any part of the haul. The remainder of its gain would be obtained by the diversion to it of revenues from shipments on which Milwaukee at present has no part of the haul. There is no representation that Milwaukee, under this condition 4, could offer the public faster or better service than the service of the merged lines; on the contrary, while the proposed interchanges at Miles City, Lombard, and Judith Gap could physically be made, the proposal would require the insertion of unnecessary interchanges and resulting delays into the service on these shipments. The through cars would be handled by the merged line for Milwaukee's benefit, a total distance of at least 261 miles and up to 332 miles, junction point to junction point, plus the switching at Billings.

Milwaukee made no breakdown by commodities, by destination points, local or common, intrastate or interstate, on outbound shipments or by direction east or west of Billings, and similarly, no breakdown on inbound shipments as to commodities, origin points or direction or movement, nor were any work papers prepared.

The overwhelming sentiment of the commercial interests at Billings is favorable to unification without Milwaukee condition 4. That the shipping public at Billings would be benefited by and supports unification has been evidenced by Intervener Billings Traffic Bureau, representing 70 wholesalers, manufacturers, jobbers and distributors located at Billings, and the Billings Chamber of Commerce, consisting of 1,000 corporate and individual

members whose support of unification is exclusive of imposition of Milwaukee condition 4.

Despite the appeal which the prospect of added railroad service usually has to a particular community support in general for Milwaukee condition 4 was weak and unimpressive. A Montana feed lot operator wants another railroad from which Billings can draw cattle for feeding in transit, but Milwaukee would not serve that shipper's feed lot. The shipper admits to present satisfactory rail service. Another engaged in feed and fertilizer acknowledged that competition would be beneficial did not show how Milwaukee service to Billings would affect his transportation problems. A food broker favors condition 4 solely in the interest of competitive rail service, would not be able to utilize Milwaukee for a substantial part of his business is satisfied with present service of applicants, and is not aware of the services available under the merged lines as unified. Remaining witnesses' evidence fall into three categories: (1) Stop-car shippers; (2) those interested in maintenance of rates to and from Billings in connection with traffic which may move via Milwaukee; and (3) those who generally consider that rail competition at Billings would be desirable. None of the stop-car shippers indicated that present service via Billings was unsatisfactory. None indicated that under present pattern of routing they could not utilize Billings as a stop point in connection with shipments via the merged lines, or that they would not have precisely the same privileges after merger as at present. Some witnesses are under the erroneous impression that merger would eliminate existing present joint rates and routes from Billings via Miles City junction to destinations on Milwaukee in South Dakota, being unaware of applicants' willingness to observe the standard routing condition with respect to maintenance of existing routes and gateways. Significantly, of the Milwaukee shipper witnesses, none demonstrated that Milwaukee condition 4 was needed to meet their transportation requirements.

In summary, Milwaukee's requested condition 4 has no merit, nor has it been shown to be Warranted by the evi-

dence. Moreover, imposition of such a condition would establish a harsh and unorthodox precedent for other railroads throughout the country to invade communities which their lines have bypassed.

Milwaukee condition 5 deals with proposed mandatory elimination or reduction of numerous switching charges and mandatory absorption of some switching charges. As previously indicated, the dual basis of switch charges collected by the switching lines on traffic interchanged for switch delivery within the terminal areas not only restricts the traffic available for movement over the lines of Milwaukee and the location of industry on its trackage at terminals competitive with the merging lines west of Twin Cities, but has been a severe handicap in Milwaukee's efforts to compete with the applicant railroads. Those classes of switch charges and arrangements have been previously described.

Substantial shipper support for Milwaukee condition 5 is evidenced favoring elimination of non-competitive switch charges. While that is not surprising since most shippers favor reductions in their freight charges, the dual basis of switch charges now involved is highly restrictive and impedes cultivation of competitive transportation services which in some areas is not only desirable but necessary to a healthy transport system. A prominent traffic manager and transportation consultant, representing many different industries and shipper associations (Intervener Tolin Group), presented strong evidence showing that the railroad that switches a plant or warehouse normally gets most of the competitive traffic of that plant, and that the dual basis of switching charges determines on what railroad or railroads a new or relocated industry is located. Another intervener, Fargo Chamber of Commerce, confirms that view and finds it difficult to suggest to a potential locator at Fargo that he locate on Milwaukee principally because of the switch charge which would not be involved if he located adjacent on applicant lines.

A large paper and wood pulp producer has mills at Port Townsend, Port Angeles and Tacoma, Wash., served

by Milwaukee and cites a serious problem created by the present system of dual switching charges which it wants abolished. In instances where the Northern Lines and Union Pacific do not absorb the switch charge at Tacoma they have placed rates on paper products from Port Townsend differentially over Tacoma to California, Utah and Colorado by the appropriate amount of the noncompetitive switch charge at Tacoma. Where Milwaukee switch at Tacoma is absorbed by other railroads, routing from Port Townsend is restricted to Seattle rather than Chehalis interchange.

A manufacturer of stain and pre-stained cedar siding material located on Northern Pacific at Seattle ships 150-200 cars annually via applicant lines on transit rates, outbound routing dependent upon inbound sources. On inbound shipments of material via Milwaukee it must pay a non-competitive charge with the result it is unprofitable to obtain materials from Milwaukee points and shipper is limited to acquiring raw material from sources of supply on the Northern Lines to avoid additional non-competitive charges.

A Seattle grain merchandiser indicates that the restrictive effect of dual switching charges affects the buying and selling of grain in that the assessment of a switch charge in addition to the line-haul rate makes a difference in the sale of grain at many of the smaller points where grain is received for feed.

Another shipper concerned with the effect of merger upon its competitive status unless the dual basis of switching charges is eliminated and line haul carriers absorb the switch charges is a wholesale distributor of lumber and plywood at Tacoma. Located on Milwaukee, on shipments of pine originating in Oregon, it must absorb the switch charge. Its competitors located on either of the Northern Lines will by merger have the non-competitive switch charge removed. When source of supply is on either one of the merging lines the net result on merger would be a disadvantage to the supporting shipper.

Other shippers supporting imposition of Milwaukee condition 5 find that non-absorbed switch charges fre-

quently cause expensive accounting and rebilling problems. One of the nation's largest mail order houses and freight shippers considered patently unfair the system of extracting switch charges from a shipper which chooses to route via two carriers to a non-competitive point. Six other shippers favoring elimination of the dual basis of switching charges and absorption by the line haul carrier because of resulting benefits to the shipper are concerned with their substantial shipments of a wide variety of commodities.

Milwaukee estimates that although it experiences an annual revenue loss approximating $175,000 (most of which is concerned with operations at Everett and Bellingham), because such a system of switching charges is currently effective, elimination of the dual system of switching charges and absorption by line haul carriers as contemplated by its condition 5 will produce additional revenues to it approximating $1 million annually. While no breakdown or detail was provided, the estimate implies that throughout its system in the Northwest, Milwaukee absorbs more switching charges of applicants than applicants absorb of Milwaukee. Applicants made no estimate concerning the Milwaukee's revenue gain and presumably have no quarrel with Milwaukee's estimate.

A careful analysis of the evidence and arguments indicates that upon abolishment of the dual switching basis, a single system of tariff switching charges on the same per car basis as now applies on non-competitive traffic could be established. That would provide shippers and receivers on all lines with an equality of freight charges and provide all carriers access to all industries within a terminal area on the same basis so far as total tariff charges are concerned. Imposition of such a condition as contemplated by Milwaukee condition 5 has precedent. In the *Acquisition case, supra,* the Commission required the applicants therein to enter into a fair and reasonable joint arrangement whereby all terminals which they served would be opened to all users on fair and equal terms so that every industry on whatever rails located would have access to all lines radiating from that termin-

al, and every line carrier reaching that terminal would similarly have access to all terminal tracks within the terminal area.

In summary, the hearing examiner concludes that Milwaukee condition 5 has merit, should be imposed in any authorization herein, and the recomended findings will be so conditioned. Suffice it to say, the dual basis of switching rates deprives the shipper and carrier of the protection which the Commission found necessary in the *Acquisition case, supra,* and no different conclusion is warranted on the basis of the record herein.

Milwaukee condition 6 deals with re-establishment of rate relationships. Milwaukee asserts it is not intended to eliminate separately established combination rates over all junctions between the Milwaukee and the merged company but only those which apply via junctions over which traffic can now and does move commercially, but which if they were to remain in effect would be out of line with rates maintained by the New Company.

Application of lower single-line rate basis between points on Milwaukee and points on the merged company to the same extent that single-line rates take effect between points on the applicants' line by reason of merger is reflected in evidence offered by five shippers (coal, sugar, paper and paper products, heavy equipment and construction materials, and salt), who are concerned with rates available to their competitors.

It is expected that when adjustments are made by the merged company, corresponding adjustments between the merged company and Milwaukee would be considered through normal rate committee channels. Milwaukee urges that the Commission, however, should require as a condition to merger that the merged company concur in rate adjustments with Milwaukee to maintain competitive relationships for shippers and receivers on Milwaukee, indicating that as restoration of rate relationships would merely forestall loss of a portion of the traffic which would be diverted from Milwaukee by reason of unification this condition 6 would result in no traffic gain to Milwaukee nor loss by the merged company.

A careful review of the evidence and arguments in regard to the proposition covered by Milwaukee condition 6 indicates the condition is unnecessary for the protection of either of shippers or of Milwaukee. An example is the existence of huge numbers of paper rates which make literal compliance with the language of the condition a practical impossibility. Where it develops that service and readjustment of certain rates would be appropriate under normal factors of judgment, it appears that it can be attained jointly by the traffic representatives of the interested railroads, or by recourse to this Commission in appropriate rate proceedings under part I of the Act, as there is no slide-rule method of making rates or of determining the relevant relationships that go into rate making. Under the circumstances, Milwaukee's request for imposition of its condition 6 should be rejected.

In summary, Milwaukee's requested conditions 2, 3, and 5, have substantial merit and should be imposed in any authorization of the proposed unification. Its request for the remaining conditions should be rejected as not warranted by the evidence.

The evidence shows that unification as proposed would adversely effect Milwaukee in loss of revenues to the extent of $3,777,853, which, together with added transcontinental train cost of $3,010,450, aggregates $6,788,303. Imposition of conditions 2, 3, and 5 would enable it to substantially recover that loss in revenues by a revamping of competitive operations between Milwaukee and the merging lines in western Washington, an area the evidence clearly shows requires a high degree of intramodal competition, within the framework of the recommended conditions producing net revenue gain of $6,590,000.[35] While not mathematically making Milwaukee whole, it does so substantially, but more significantly it would place Milwaukee in a truly competitive position in western Washington for the first time in its long and turbulent history.

[35] Gross revenue gain of $8,600,000, less cost of Sumas-Portland train $1,996,000, expense of 9.1 percent of revenue gain from condition 5 or $91,000, and car hire at 5.32 percent of revenue gain from condition 5 or $53,000, or a total expense of $2,110,000.

C&NW. Intervener C&NW opposes the application on the grounds that to the extent the proposed unification obtains substantial benefits at its expense and materially impairs its ability to provide essential transportation service to the area it serves the transactions would not be in the public interest. C&NW considers itself a railroad that for many years has been marginal in nature, its earnings erratic, and particularly subject to fluctuations in the economy. It recognizes that mergers between financially strong railroads, between railroads that have a record of consistent earnings, and between railroads that are not subject to cyclical influences may be desirable and in the public interest, provided that such mergers do not place at a competitive disadvantage other railroads which perform essential public services which have erratic and marginal earnings' records, or which are unusualy sensitive to cyclical forces. Moreover, it is not opposed to the proposed unification, if specific traffic and operating conditions are imposed in any approval order the Commission should enter herein, which would provide it with an opportunity to protect its financial integrity and continue to render satisfactory service to the public. It indicated on brief it is prepared to support unification if the conditions it requests are granted.

C&NW points out that the Northern Lines merger transaction (while it is believed it refers to unification of all the properties involved its reference is limited), is one among financially strong railroads having consistent earnings records, and whose railroad earnings are supported by substantial sources of other income which cushions the particular railroads to a considerable degree against fluctuations of the business cycle. To offset C&NW's anticipated and probable loss of revenues annually which applicants estimate would approximate $2,518,688, or 1.22 percent of C&NW's $207,271,897 gross operating revenues for 1960 and which C&NW estimates would approximate $4,375,600, or approximately 75 percent more than the amount estimated by applicants, C&NW asserts its ability to serve the public would be impaired unless the Commission imposes conditions to approval of the unification proposal, which conditions would

reduce the loss of gross revenue by about $1 million, and reduce rentals and other expenses by $464,100, if it finds the transactions proposed otherwise consistent with the public interest. Those proposed conditions are set forth in appendix N-9 hereto.

In addition, it requests the Commission to require, if it imposes Milwaukee condition 1, subsequently discussed, that the Milwaukee open its western junctions to routing via C&NW of all traffic interchanged by Milwaukee and New Company pursuant to Milwaukee condition 1.

The lines of C&NW extend from Chicago to Council Bluffs, Iowa, and Omaha; from Chicago to Twin Cities; from Omaha to Twin Cities; from Chicago through Milwaukee and Green Bay, Wis., to Ishpeming, Mich.; from Chicago through Winona, Minn., to Rapid City and Belle Fourche, S. Dak.; from Huron, S. Dak., through Sanborn, Minn., and Belle Plaine, Iowa, to Chicago; from Omaha to Lander, Wyo., via Crawford, Nebr.; and from Twin Cities, Chicago and Omaha to St. Louis, Mo. Other lines reach Duluth, Superior and Ashland, Wis., Sioux Falls-Mitchell, S. Dak., and Oakes, N. Dak. In the nine states [36] it serves it operated (1961), over a total of 10,702 miles of track, with a total of 15,637 employees. At the end of 1961 it owned 747 diesel locomotives and owned and leased 43,426 freight train cars and 471 passenger train cars.

The westernmost points on C&NW which connect with lines providing transcontinental service are at Crawford, connecting with Burlington, and at Oakes, connecting with Northern Pacific. It has a total of 222 junction points (of which 57 connect with applicants), where it can interchange traffic with one or more railroads. The more important junction points with western connections include Council Bluffs, Des Moines, Twin Cities, and Crawford, Fremont, Lincoln, Norfolk, and Superior, Nebr., Oakes, N. Dak., and Orin, Wyo.

C&NW is an important segment in through transcon-

[36] Wisconsin 2,654 miles, Iowa 2,153 miles, Minnesota 1,541 miles, South Dakota 1,448 miles, Nebraska 1,153 miles, Illinois 923 miles, Michigan 467 miles, Wyoming 288 miles, and North Dakota 14 miles.

tinental routes, not only as an intermediate carrier between eastern railroads and the transcontinental lines, but also as to traffic originating and terminating in the territory it serves. The principal gateways for interchange of transcontinental traffic have been Chicago, Council Bluffs, Omaha, and Twin Cities, but interchange has been made at other gateways.

C&NW historically has been a relatively short haul carrier, a large percentage of the short haul traffic on its lines being accounted for by the concentration of industries in central and northern Illinois, southern and eastern Wisconsin and eastern Iowa. Outside those areas it is much more dependent upon agricultural, livestock products, products of mines and manufactured and miscellaneous. Its average haul in 1961 was only 236 miles compared with 349 miles average haul for the Northern Lines. Likewise, its percent of yard crew wages to road crew wages was 78.1 percent as against the Northern Lines' 57.3 percent. Short-haul traffic provides less revenues over which to spread terminal costs, etc., and it also is the traffic most subject to diversion to motor carriers. Loss of local traffic has placed a substantial burden for producing revenues to meet fixed expenses on traffic originating and/or terminating on other lines. For example, from 1930 to 1955, the traffic local to C&NW fell from 33.6 percent to 19.5 percent. During the same period, the percentage of all categories of interchange traffic increased and overhead traffic (originating and terminating off-line), increased from 8.1 percent to 18.7 percent. Data subsequent to 1955 are not susceptible to comparison because of duplication respecting other railroad properties acquired. Thus, it is evident that C&NW has depended increasingly on other than local traffic and the proposed unification brings into focus its concern for that traffic.

The area served by C&NW is most subject to motor carrier and water carrier competition. The motor carrier competition is more severe because the area's traffic is by and large short-haul traffic most subject to diversion to trucks and because the area's traffic involves heavy movements of agricultural commodities, which are

exempt from motor carrier regulation. Likewise, it suffers severely from the competition of the water carriers on the Mississippi, Illinois and Missouri Rivers. Water carrier competition is most severe in its territory because of the direction the rivers run and also because the commodities produced are primarily agricultural and thus move by water in bulk, exempt from regulation.

C&NW has also suffered traffic losses from the decentralization of industry. Much of the movement of industry has been from the territory served by C&NW. While there are many instances of such decentralization, it is sufficient to mention three industries of great importance in the territory involved which have been engaged in decentralization of their plants and operations, namely: the brewery industry, the paper industry and the pipe industry.

The midwestern area served by C&NW is in the nation's surplus grain territory. C&NW and its predecessors were originally constructed with a multitude of feeder branch lines to carry the surplus grain from country elevators to secondary and primary terminal markets such as Minneapolis, Chicago, Sioux City and Omaha. As farmers and elevators more and more engaged motor and water carriage, C&NW suffered serious losses in revenues and many of its facilities were made obsolete. It has attempted to adjust to these changes in traffic patterns by eliminating those obsolete facilities, such as branch lines and agency stations where traffic no longer justifies the expense of maintaining the facilities, in order to maintain its ability to serve those who still need and depend upon its services.

The change in the traffic has placed a larger burden for producing the necessary revenues to meet fixed and operating expenses on traffic originated and/or terminated by other lines. A substantial proportion of the traffic in the category originated and/or terminated offline is traffic moving transcontinentally by Great Northern and Northern Pacific in connection with C&NW. For example, in 1961, of all traffic handled by C&NW 69.6 percent involved interchange traffic. Of that traffic, a substantial portion involves lumber interchanged with

C&NW at Twin Cities. Moreover, not only does C&NW depend largely on non-local traffic for most of its revenues, but it also must compete with several other midwest railroads on most of the non-local traffic. That situation imposes on it the necessity of maintaining a large aggressive sales force at 75 field offices, both on and off-line.

In recent years C&NW has enjoyed some success in soliciting transcontinental traffic for movement over its lines between Chicago and Twin Cities and in 1961 it handled more of the traffic interlined with the Northern Lines at Twin Cities than any other railroad including Burlington. Though the Northern Lines have long controlled Burlington, C&NW has had a fair measure of success in soliciting transcontinental traffic for handling over C&NW's lines between Twin Cities and Chicago. The evidence shows that Burlington has handled less than one-third of all traffic interchanged at Twin Cities with the Northern Lines. It is that traffic which C&NW considers would be jeopardized if unification is approved.

Prior to 1930, C&NW enjoyed an average annual net income of over $12 million. During the next succeeding five years it experienced average annual net losses of $6.5 million, and in 1935 sought relief through reorganization under the bankruptcy laws, from which it emerged June 1, 1944. During the period of World War II, C&NW, along with the industry generally, enjoyed a substantial improvement in earnings, and it continued to do so through 1951, its average annual net income for the years 1947 through 1951 approximating $4.6 million. From 1952 to 1961, however, it suffered serious losses in all but five years, its cumulative net loss approximating $6 million. It has not paid a dividend on its common stock since 1950. It has not made a dividend payment on its preferred stock since 1954, which was a partial payment, and by 1961 it has an interest accumulation of 5.8 percent on its income bonds.

Since 1956 when it came under new management, C&NW pursued a vigorous cost control program on many fronts to assure maintenance of financial stability through (1) more efficient utilization of diesel power by elimina-

tion of all steam engine facilities and inventory, (2) improved crossing protection—by substitution of mechanical devices at 173 locations for 561 watchmen, with an investment of $4 million producing annual savings of over $2 million, (3) modernization of accounting procedures and installation of electronic computers and office machines, (4) installation at a cost of approximately $6 million of a new all-weather car shop at Clinton, Iowa, replacing 14 less efficient facilities for car repair and construction, (5) construction of a new electronic classification yard at Proviso (Chicago), permitting elimination of three less efficient sub-yards, (6) elimination of unprofitable passenger trains permitting reduction of passenger deficit by $14 million annually, (7) modernization of its suburban passenger-car fleet, (8) revision of the character of its less-than-carload service which almost eliminated its less-than-carload deficit, and (9) consolidation of stations in rural areas with savings of over $1.5 million annually. It also leased the property and equipment of its subsidiary, the Chicago, St. Paul, Minneapolis & Omaha Railway, acquired and merged with Litchfield & Madison Railway, and acquired the properties of Minneapolis & St. Louis Railway (M & St. L).

The described program of improvement and expansion due primarily to its vigorous managerial perspective and pursuit has enabled C&NW to improve its financial position in 1962, as compared with 1956. However, despite those efforts and the possibility of potential additional economies it views its financial circumstances as still unsatisfactory, having suffered a net deficit of $4.56 million in the last five years. Moreover, it anticipates certain known and unavoidable increases in operating costs in the next few years, and asserts that opportunities for absorbing such increases are much less than previously existed.

In the recent past, C&NW and Milwaukee had participated in extensive negotiations looking to merger of their properties but those negotiations came to naught, and there have been no negotiations since March 1961, one month after the subject applications were filed. Some speculation was evidenced on this record as to possible

resumption of such negotiations. The likelihood of successful negotiations with Milwaukee or some other railroad is, on this record, wholly speculative.

C&NW's revenue for 1961 was $218,117,000, of which $190,982,000 was from freight operations. The balance of $8,179,000 was for switching services and other miscellaneous functions.

The five largest revenue commodities handled by C&NW in 1961 were lumber, corn, bituminous coal, iron ore and wheat. In its freight operations, it is greatly dependent upon traffic interchanged with their carriers. In 1961, of a total of 1,474,093 cars handled by it, 641,412, or 44 percent, were received from connecting lines.

Included in its passenger revenues are suburban revenues of $11,890,000 for 1961. C&NW is the largest suburban railroad serving Chicago and handles approximately 70,000 passengers each working day.

On the basis of statistics of record, C&NW represents about six percent of the railroad industry in Western District and about two and one-half percent of the railroad industry of the country as a whole.

Certain significant operating and financial data for C&NW are set forth in appendix N-10. On the basis of data it furnished, it appears its earnings have been erratic, and, in part, subject to some fluctuations in the economy. Significantly, its operations 1957-1961 were fairly constant although its operating expenses underwent some reduction due principally to reduction in labor costs,[37] and its net income position improved. It introduced considerable financial data reflecting its comparative position to that of the Northern Lines.

C&NW contends that its traffic would be affected by unification to the extent of loss in two areas: (1) In traffic revenues, and (2) in net income. A large proportion of the traffic which C&NW considers as subject to diversion is traffic in which it now participates between Chicago and Twin Cities prior to or subsequent to a line-haul movement by Great Northern or Northern

[37] From 1952-1961 its number of employees was reduced from 30,028 to 16,505.

Pacific. While none of the Chicago-Twin Cities railroads, except Milwaukee, can claim any substantial service advantage in handling that traffic through the Twin Cities, the primary concern of C&NW is the fact that following consummation of the proposed unification, New Company's solicitors would be enabled to claim the advantage of single-line service between the Pacific Northwest and Chicago predicated on the assurance of faster service, wider availability of reconsignment and diversion privileges, wider availability of transit, etc., all of which follows from single-line operation. C&NW estimates its probable loss in gross revenues to New Company as a result of the proposed unification would be at least $4,375,000. It estimates its probable loss to New Company in net income as a result of the proposed unification would approximate $2,841,523. Moreover, it contends that while applicants concede a diversion in gross revenues of $2,518,688 (a gross diversion of $2,675,852, less offset in part by gain of $157,164), the differences in the two estimates ($1,856,912), reflects understatements in applicants' estimates in three particulars: (1) That applicants underestimated by $1,246,191 the impact of unification on the major commodities interchanged in line-haul service between applicant lines and C&NW, (2) that applicants' offset results of the loss estimated by $157,164 is without support therefor, and (3) that applicants' estimate was based on sample of traffic which ignored one large body of traffic (revenue on cars switched by Great Northern or Northern Pacific at Twin Cities and delivered to or received by C&NW for road haul—$453,557), subject to diversion.

The conditions requested by C&NW fall into three categories: (1) Traffic conditions including opening of two specific gateways for traffic designed to offset in part the revenues loss which it anticipates would result from the unification, and enable it to provide improved service to the shipping public including the establishment of two gateways, one at Oakes and the other at Crawford; (2) operating conditions designed to require New Company (a) to coordinate its planned terminal improvements and

operations with the similar operations of C&NW and to offset in part the revenue loss which it anticipates would result from unification, (b) to revise or rescind certain operating contracts with C&NW, and (c) to provide physical facilities by sale or lease for improved operations with C&NW at certain interchange points; and (3) modification of the so-called standard conditions proposed by applicants to the particular traffic pattern here involved.

C&NW argues that if unification of the Northern Lines is permitted, it is imperative that it be upon such conditions as will either reduce the competitive effect of unification upon C&NW, or compensate C&NW appropriately for the changes in its situation, that imposition of such conditions would provide it with an opportunity to protect its financial integrity and enable it to continue to render satisfactory service to the public. It further argues that if its estimates of impact of unification are correct it would not be in as good position if unification is approved with the conditions it requests as it would be without any unification at all, but is prepared to support the applications if the conditions it requests are granted.

The conditions requested by C&NW appear to have jelled on brief. Its initial proposal, presented at the hearing particularly in respect of its departure from the standard routing conditions, was in general terms and vague. At the time it presented its evidence no specific proposal was made. However, subsequently it presented for the first time its "Proposed Revision to Applicants' Condition 1" which would add two subparagraphs to the first standard condition as otherwise proposed and spelled out in the stipulation between applicants and Union Pacific in Exhibit 68.

By C&NW's proposed condition 1, it seeks a modification of the standard routing condition which applicants propose and which six other railroad interveners concur. It asserts applicants' standard routing condition is of major importance because the very life of C&NW depends on its ability to solicit interchange traffic generally and Northern Lines' interchange traffic specifically. Also be-

cause of the unusually large number of points where C&NW interchanges with applicants (57, or 25 percent of its total of 222 interchange points with all railroads), it is seriously concerned that what it calls the "generality of language" in applicants' standard routing condition may permit New Company to eliminate C&NW from participation in important classes of interchange traffic, when New Company publishes its initial rates and when it publishes new or reduced rates. The major points of interchange between applicants and C&NW are Twin Cities, Council Bluffs-Omaha, and Head-of-the-Lakes.

It contends that because of its dependence on traffic interchanged with the Northern Lines and the large number of interchange points indicated, it is seriously concerned that the language in the standard routing condition may permit New Company to eliminate C&NW from participation in important classes of interchange traffic when New Company publishes its initial rates and when it publishes new or reduced rates. It argues that the Northern Lines have always jealously protected their long-haul, even to the extent of applying their restrictive policy in connection with Burlington. Its fears, it asserts, are increased by recent disputes over the correct interpretation of standard routing condition 1 which have arisen from earlier merger proceedings, citing, *Enforcement of Conditions in Merger Proceedings*, 313 I.C.C. 191 (1961), and *Rates, Various Commodities, Between Points in Canada, Midwest & East—C., M., St. P. & P.R. Co., et al.,* I.C.C. , No. 33854, decided November 2, 1962 (Not Printed).

The two proceedings cited do not support C&NW's proposal for modification of the standard routing condition. In both proceedings the Commission found that the carriers involved had closed certain routes in violation of the standard conditions. The first cited case involved a demand by Southern Railway and one of its affiliates that L&N (the merged company), establish a joint rate on fine coal from certain Tennessee mines located on one of the merged railroads to an Alabama destination via Chattanooga. The commodity rate in effect on that route was, at the time of merger, equivalent to that on

competing routes via the L&N and via another connection, the T.A. & G. After merger, L&N had reduced the rate over its then single line route and over the route involving T.A. & G., but refused to do likewise over the Southern's Chattanooga route because of failure to agree on decisions. Therein the Commission stated (313 I.C.C. at page 194):

> The language is plain; it means that the L&N is foreclosed from doing anything which will have the effect of closing, commercially or otherwise, any of the routes which existed at the time of the merger, without our authorization.

In view of the plain language of the standard routing conditions, reinforced by the decision of the Commission just cited, there is no ambiguity in the requirements of the first standard operating condition that where a commodity rate at the time of merger is equalized via several routes, a rate reduction via one route is to be made applicable over the others as well, and any arguments about divisions are to be handled separately. C&NW's proposed modification of the standard routing condition subparagraph 1(b) relates to such a situation but it is wholly unnecessary because of the plain language of the standard condition itself.

In the second cited case stemming from the merger proceedings in *Duluth, S.S. & A.R. Co. Merger*, 312 I.C.C. 341, involved a petition by C&NW and Milwaukee alleging eight violations by Soo of the first standard condition. Generally, the dispute involved interpretation over class and commodity rate applications. Therein the commission stated:

> The existence of combination rates on various commodities over certain routes does not necessarily indicate that those routes were commercially open. As indicated, the combination routes mentioned did not move any traffic prior to the merger which impels the conclusion that the routes over which those rates applied were commercially closed. * * * We further find that the petitioners have not shown that the

> Soo Line's failure to establish reduced rates on routes in connection with certain connecting carriers, for application also over routes including the petitioners, has the effect of commercially closing the latter routes in violation of the merger conditions.

Factual situations may continue to arise, of course, with arguments about the nature of particular rates at particular junction points as being or not being included within the intended protection of existing gateways and patterns of traffic. These can and will be resolved in proper course, and the decisions of the Commission prescribing guidelines for interpretation of the first standard condition in the cases cited should aid in minimizing the scope of any disagreements. To depart from the standard conditions as herein proposed by C&NW would produce chaotic increase in the area of disagreement as well as producing other harmful results. C&NW's proposal dealing with modification of standard routing conditions is without merit and should be rejected.

As previously indicated applicants based their estimate of the amount of traffic from other railroads they expected would accrue to New Company by diversion on unification on a ten percent sample of 1955 interline abstracts, which record revenue on line-haul traffic interchanged by each of the applicants with other railroads via all interchange points. The traffic sample was designed to identify the potential traffic which could be diverted from other railroads to New Company, to which applicants applied judgment percentages to the revenue by commodity received by other railroads either interline forwarder, interline received, or interline intermediate freight as shown on appendix N-8 previously discussed.

In that connection, it is desirable to describe the study dealing with diversion in respect of line-haul traffic affecting C&NW undertaken by applicants under the direction of its consultants. The basic study by Great Northern considered the factor that would affect the movement of each commodity for each class of traffic, forwarded, received, and intermediate, and estimated the proportion to be secured by solicitation on the basis of

conditions surrounding each case. A total of more than 400 special calculations were made. Burlington followed the same process as Great Northern. Northern Pacific applied essentially the same factors as the basis for its judgment percentages as did the other railroad applicants, but instead of applying separate percentages to each commodity, they estimated increases of 20 percent for interline forwarded and received freight, and 15 percent for intermediate freight, subject to certain exceptions, as previously described. The Northern Pacific study not only provided for the exceptions as to particular movements, but also had the benefit of the detail commodity by commodity studies of other applicant railroads as a cross check to insure against the dangers inherent in attempting to ascertain standard percentages.

The percentages represented the amount of the total potential line-haul traffic by commodity subject to diversion, which, adjusted to reflect 1960 levels of revenues, showed increase in revenues to applicants of $12,044,709, of which $2,675,852 would concern C&NW. To that figure was applied a gain offset of $157,164 (which represents that change in volume of traffic arising out of the fact that some shippers now allocate traffic among carriers by counting each of the applicants as one railroad and those shippers would reallocate traffic in the event of unification by counting New Company as one, rather than giving New Company a weight of two or three, as the case may be), resulting in a net figure of $2,518,688 in gross revenues.

After reviewing the applicants' testimony, exhibits and underlying data dealing with its diversion estimates, C&NW embarked on a study of the proposal of applicants to simplify terminal operations at Twin Cities and Head-of-the-Lakes. After preliminary analysis, it requested applicants to permit C&NW to participate in some of the terminal operation improvements, but there resulted no agreement to coordinate C&NW operations with the proposed unified operations of New Company. C&NW then undertook a study of prospective diversion of traffic, and determined to use applicants' traffic study as a basis for

independent analysis of the effect of the proposed unification.

After reviewing the procedures, C&NW concluded that it should be feasible to segregate the interline abstracts in which it was involved either as a direct connection or otherwise (indirect), as a line in the routing of the traffic with one of the Northern Lines. Next came the identifying of those movements on which the Northern Lines estimated the longer haul together with recordation of the revenues actually received by C&NW, the actual junction points of interchange and the percentage which the Northern Lines estimated would be lost by C&NW. In taking up that phase of potential diversion dealing with line-haul traffic, it confined its analysis to commodities which applicants characterized as "principal commodities" and the block of traffic which formed the basis of applicants' study. Once the principal commodities were isolated, study was made of the charectristics of the movement involved, the reasons why C&NW was presently participating in the traffic, and impact of unification on continued participation in the traffic. C&NW agreed generally with the judgment percentages of applicants except as to eight principal commodities' traffic movements as described in appendixes N-8 and N-11.

Comparison of the applicants' estimates as shown in their summary working papers and C&NW's calculations based on data drawn from applicants' detail papers is shown in table I of appendix N-12. Having obtained an approximate balance, the judgment percentages of C&NW traffic department were substituted for those used by applicants, and the results of the revised percentages are shown in table 2 of appendix N-12. After adjustment to 1960 revenue levels and using the same procedures as shown in applicants' working papers, the comparative estimates are shown in table 3 of appendix N-12. After adjustment to reflect relationship of net freight revenue to gross freight revenue and using the same procedures as applicants, produced comparative results shown in table 4 of appendix N-12.

Aside from the eight principal commodities' traffic movements C&NW made no change in the revenue esti-

mate of other commodities. Since the difference between applicants and C&NW concern in every instance commodities where the latter believes the unified company's gain and C&NW's loss will be 30, 50 or 60 percent compared to applicants' estimates of 15, 20, and 30 percent, it is significant to note that the differing percentages as to the eight principal commodities traffic movements (five commodities—three types of movement), account for substantially all of the difference in dollars between the respective estimates.

For the five commodity classes flour, wheat (105), potatoes, other than sweet (085), lumber, shingles and lath (411), veneer, plywood, and built up wood (415), and woodpulp (653), C&NW claims that applicants' judgment percentages of loss should be sharply increased on the movements of those commodities received by C&NW from Great Northern and Northern Pacific. On flour forwarded from Northern Pacific, C&NW would increase the diversion percentage from 20 percent estimated by applicants to a figure of 50 percent, and on lumber, veneer and woodpulp, C&NW would double the percentage estimating a diversion of 60 percent. On flour and potatoes forwarded from Great Northern, C&NW would more than triple the estimate, urging that 50 percent would be diverted. The total effects of the indicated increases in percentages would increase the amount of diversion from applicants' estimate of $2,675,-852 to an amount of $3,922,043.

The further amount, bringing the total to $4,375,000 resulted from C&NW's estimates that from 50 to 90 percent of its revenues on cars to or from Twin Cities which it now obtains (against the competition of Burlington and other railroads), for the line-haul movement to or from industries located on the Great Northern or Northern Pacific would be diverted as a result of the proposed unification.

As to C&NW's estimate of percentage of diversion of the commodities mentioned, the manner in which the proposed inflation of percentages was determined discredits the increases. The official of C&NW responsible for the estimates testified that he asked the commodity special-

ists in his department to review the percentages estimated by applicants and discuss them with him, and he stated on cross-examination that "The specialists were called in to give their personal opinion in their particular field—grain, fruit, lumber, and so forth." The specialists were C&NW traffic solicitors. Their "personal opinion," however, was not adopted; it was less than the percentages for which C&NW is now contending. Nor were they canvassed to determine whether they agreed with the ultimate estimates of percentages urged by C&NW. Such a method of arriving at estimates of probable diversion does not only fail to produce reliable results but fails to support the principal argument of diversion. Thus, it is obvious that there has not been established with clarity on this record the basis upon which C&NW arrived at its percentages.

The procedure followed by C&NW analyzing the Northern Lines' traffic study summarizes the main line of departure of the contending parties. Attached appendix N-11 is a reproduction of exhibit 113 which portrays the principal commodities by classification as isolated and the estimates of respective percentages of traffic affected. On other commodities, no differences arose over percentages applied to commodities and in that area there was agreement. The key to the differences arising in connection with C&NW's evidence is the statement in its exhibit 111: "The judgment percentages of the North Western [C&NW] Traffic Department were substituted for the percentages used by the Northern Lines. . . ." The substitution establishes the difference of about $1,076,000 (without the benefit of adjustment to reflect 1960 revenues), and is constituted almost entirely of "forwarded freight traffic" by Great Northern and Northern Pacific. The C&NW does not materially question or revise the competitive position of Burlington with respect to diversion potential. C&NW indicates that the difference is the result of underestimation of losses with respect to the five commodity classes.

In analyzing this evidence involving judgments by two different but qualified sources dealing with the same traffic material, it is incumbent upon the hearing exam-

iner to ascertain which more accurately portrays the circumstances in order to arrive at the finding of the fact with some degree of certainty. Upon this record the problem presented is indeed difficult but not impossible of solution. Resort to an appropriate, substantially sound yardstick is therefore necessary to achieve this end. That yardstick is the Carload Waybill Statistics, Interstate Commerce Commission, 1960, sometimes referred to as the one percent waybill sample, and Freight Commodity Statistics for Class I Railroad in the United States, for the year ended December 31, 1960, Interstate Commerce Commission.

Each of the commodities has been examined to determine origins in states served by Northern Pacific and/or Great Northern and terminations in states served by C&NW with additional considerations as to whether C&NW was a bridge carrier or terminating line. Table I of appendix N-13 hereto deals with flour, wheat (015) classification of carload rail freight in the selected states. Analysis thereof does not reflect any important diversionary potential. Most wheat flour originates in Minnesota and while 15 percent is shipped to Illinois, such shipments would traverse well established routes which will not be enhanced as a result of unification. Some 11 percent of wheat flour moves to Wisconsin, which would be unaffected by unification since applicants have limited operations in that State. Minnesota shipments to Iowa or Nebraska would not be enhanced by unification as those routes would not be affected. Wheat flour originating in Wisconsin moves mostly to Illinois, and such movements would be unaffected by unification. An area of possible diversion in wheat flour movements involves North Dakota originations which may be aided by the new fast east-west route. If North Dakota shipments destined Illinois points move via Twin Cities, the situation would be no different from that involving Twin Cities originations. North Dakota shipments destined Wisconsin points would be unaffected. Wisconsin shipments destined Iowa points may be subject to some small diversionary potential.

On balance, it is difficult to find significant diversion-

ary potential in wheat flour movements. Since most of it goes to Illinois destinations (particularly Chicago), it really becomes part of all the traffic between Twin Cities and Illinois, which is now subject to maximum diversion to Burlington for delivery, through coordination. Significantly, Freight Commodity Statistics, 1960, indicates C&NW terminates about 67 percent of all the wheat flour it receives from connections, which makes it difficult for other lines to effect diversionary measures.

Table II of appendix N-13 hereto deals with potatoes, other than sweet (085), classification of carload rail freight in the selected states. Analysis indicates that Idaho and North Dakota are the principal areas of production. Most shipments are terminated in Illinois (11 percent of Idaho production, and 32 percent of North Dakota production). Both areas will be on the new, fast, east-west route, so that shipments to Illinois, Minnesota and Wisconsin at least, will undoubtedly follow existing routes from Twin Cities and provide little room for diversion. Although Idaho shipments to Iowa and Nebraska may now have new routings, the commodity is one in which 65 percent of the traffic received from connections by C&NW is terminated and diversion potential consequently reduced. North Dakota shipments to Iowa would not be altered by the unification.

Again, on balance, there appears to be in the commodity potatoes very modest areas for any substantial diversion.

Table III of appendix N-13 hereto deals with lumber, shingles & lath (411), classification of carload freight in selected states. Analysis thereof indicates that the commodity is subject to some diversionary potential. That fact is acknowledged by applicants in their assignment of maximum diversion percentage to the commodity. Additionally, it is a commodity which C&NW receives from connections that has a lower percentage for termination than as a bridge carrier. Idaho traffic to Illinois, Minnesota and Wisconsin (27 percent of all Idaho shipments), while subject to the new, fast route is not important for potential diversion. Approximately 12 percent intended

for Iowa and Nebraska may be subject to new routings for longer haul.

Approximately five percent of the lumber shipments in Oregon and six percent of similar shipments in Washington are destined for Iowa and Nebraska, and are probably subject to re-routing for the longer haul. Whether shipments destined for Iowa originate in Idaho, Montana, Oregon or Washington, there is much less opportunity for diversion than in Nebraska, since the number of competitive stations is so much lower. Oregon shipments to Illinois, Minnesota and Wisconsin constitute some 17 percent of their total lumber traffic. As regards Washington shipments, 28 percent moves generally to those three states. All of such traffic would no doubt gravitate to the new, fast east-west route, and consequently be subject to minor diversion potential.

On balance, lumber is an area for diversion first, because it originates in the far west areas, so that it becomes available for long-haul on the unified system to destinations served by Burlington; second, because it is bridge traffic in many of the states served by C&NW, and routings can be those that are most advantageous to New Company, which may include routings over C&NW, as at present.

Table IV of appendix N-13 hereto deals with veneer and plywood (415), classification of carload freight in selected states. Analysis thereof indicates that traffic in veneer and plywood is similar to that for lumber (411), except that it amounts to about one third quantitatively. All of the circumstances that hold for lumber, shingles, and lath are equally applicable for plywood, and particularly that originating in Oregon and Washington. Plywood is also one of C&NW's bridge commodities in that only about 35 percent is terminated on that line.

Table V of appendix N-13 hereto deals with woodpulp (653), classification of carloal freight in selected states. Analysis thereof indicates that woodpulp might fall into the same category as those commodities covered by tables III and IV, except for two important differences: (1) Most of the production moves to Wisconsin destinations which is in an area where diversion potential is negligible, and (2) C&NW terminates 87 percent of all wood-

pulp shipments. That traffic involves long-haul shipments between either Oregon or Washington, and Wisconsin (a well-established route); practically impossible to effect any change as a result of unification. Shipments to Iowa, however, could be rerouted for the unified system's longer haul.

In summary, C&NW has failed to establish the basis for its judgment percentage of loss on the commodities just discussed. No sound reason is advanced as to why it should be at least double that of applicants. Essentially, the whole pattern of traffic eastward, along the new, fast route winds up at Twin Cities. The implication is that New Company with the new single-line haul utilizing the Burlington segments will capture substantial quantities of that traffic destined Illinois. In the opinion of the hearing examiner, coordination between Northern Pacific, Great Northern and Burlington with minor exceptions will have already diverted much of this potential.

Turning now to the subject applicants' estimate of offset to diversion of traffic from C&NW by $157,164. C&NW contends the defect in applicants' offset claim lies in the assumption that the services of New Company will be no better than the two-line service of C&NW and New Company or C&NW and another railroad, in that a shipper does not prorate traffic among all available routes unless the service is substantially the same. The contention has some degree of validity. The service advantages advanced by applicants as justification show substantial savings in time over all routes of New Company as compared to present two-line service, and other advantages such as wider transit, reconsignment and diversion, etc., which would, no doubt, have some effect on C&NW's position of solicitation. However, the advantages to the shipping public are realized only if the shipping public avails itself of the new services proposed. While it might appear that the offset theory would thus be inapplicable, the hearing examiner cannot assume on the evidence of record that C&NW would sit idly by without making some competitive overtures. As an aggressive competitor for traffic, which this record shows

it is, C&NW would, no doubt, rise to meet the situation. Moreover, it has demonstrated that it is indeed capable of meeting such competitive challenge.

Turning now to the subject dealing with traffic originating or terminating at common points with the C&NW when the Northern Lines performed only switch moves to and from industries on their lines and delivered or received cars to or from C&NW. Applicants' estimate of diversion did not include all traffic subject to diversion in that it did not include traffic as to which one of the applicant lines participated in only the switch movement. C&NW cites as example the fact that the applicants' consolidation study did not include cars destined to Chicago and which originated on Great Northern or Northern Pacific at an industry served by one of those lines in the Twin Cities. Such traffic would have to be turned over at the Twin Cities to Burlington, C&NW or other lines which serve Chicago. It contends that after unification the traffic would move via all-New Company service from industry to Chicago. While that contention has some validity, certain of the facts of record mitigate against it.

C&NW analyzed all the 1961 traffic (3,862 cars), originated by Great Northern and Northern Pacific at St. Paul, delivered by one of those lines to the C&NW at Twin Cities for line-haul movement. It contends that the net revenue (after deducting switching charges paid to the Northern Lines by C&NW), received by C&NW on traffic originating and terminating at Twin Cities in which the Northern Lines performed only a switch move and the C&NW performed the line-haul service, without transit, to and from Burlington common points totaled $748,685. C&NW estimates that it would lose to applicants at least 90 percent of the outbound traffic, and after deducting switching absorptions paid to the Northern Lines, its computation showed that such loss would approximate $453,557 in revenues from Twin Cities' traffic alone. C&NW contends that potential loss of the same character of traffic at other common points would not be as great as at Twin Cities but that such loss would occur. However, it offered no evidence or estimate thereof.

The record shows that of the 3,862 cars analyzed by C&NW, the factors relating to some 25 groupings of cars aggregating 2,850, or, after excluding or eliminating certain duplications a total of 2,368, indicate that for various differing circumstances, depending on the nature of the commodity, none of the traffic thus involved would be diverted from C&NW. C&NW admits that 128 cars were erroneously included in the study, but that 1,330 had been erroneously omitted. Failure of applicants to make analysis of the potential diversion of Northern Lines switched traffic at common points of Sioux City or Head-of-the-Lakes or to offer rebuttal of C&NW's witness on that subject, would not alter the conclusions herein reached.

Traffic interlined with Great Northern or Northern Pacific at the Twin Cities' gateway to or from Iowa and Illinois has at least four alternate lines—Burlington, Milwaukee, C&NW (50 percent inbound and 90 percent outbound), are not applied to the total amount of the line-haul shipments switched by Great Northern or Northern Pacific which are competitive between C&NW and Burlington, but the estimate is that the traffic of that type, which C&NW is successfully holding against the competition of Burlington and other lines, will move to the unified lines in the large percentages shown. It is undoubtedly clear that if the business was competitive with Burlington, but was not handled by Burlington, special circumstances probably controlled its routing and those circumstances would continue to control after unification. In the opinion of the hearing examiner, little, if any, of such traffic would be lost to any of the named lines as a result of unification for the reason that Burlington has already obtained as much as is practicable. From a realistic standpoint, applicants' proposed terminal improvements in Twin Cities should assist all lines receiving and interlining traffic and may assist their competitive posture with other transport modes.

C&NW also presented evidence estimating the amount of expense that it would save by not handling the traffic which would be diverted from it. In that regard, its con-

tention that unification would affect its net income position warrants discussion. It argues that the critical measure is the loss in net income—that is, loss in revenue less the out-of-pocket costs of handling the traffic—and how that loss compares with C&NW's total net income. It contends unification would cost C&NW $2,841,523 in net income, and that if all of applicants' theories in estimating both traffic and costs are accepted, the loss to C&NW in net income would be $1,219,222, which would greatly affect its ability to render adequate transportation service to the shippers and receivers who depend upon it for service. The estimates were on several different bases, depending on how the volume of diverted traffic would be calculated. It was estimated that, on traffic which applicants estimated for diversion, C&NW would save $910,419 by not handling the traffic. On the total traffic which C&NW estimated would be diverted, it calculated that it would save $1,534,077. There was also a savings figure of $1,376,552 estimated with respect to the volume of traffic which C&NW estimated for diversion if the claimed additional diversion of $453,557 were excluded. No terminal costs were included in the estimates by C&NW of costs it would save by not handling the diverted shipments on which it estimated the unified company would obtain the longer haul. Those omitted expenses, which clearly would be saved, aggregate some $590,976 on the volume of traffic which C&NW estimated would be diverted. With respect to the smaller volume of diversion estimated by applicants, the amount of C&NW's omitted savings in terminal expenses would be $389,147.

C&NW's actual savings of expenses on the traffic which applicants estimate would be diverted thus total $1,289,566. On C&NW's estimate of a larger amount of diversion, its savings of expenses would be $2,125,053. That C&NW would save terminal expenses on the diverted traffic appears quite clear. Its reason for omitting such savings was that terminal costs had been omitted in one of the formulas used by applicants in estimating the amount of net gains to the unified company from

the obtaining by the latter of a longer haul. It overlooks the fact that applicants already incur an original cost or an initial interchange cost and are also incurring a final interchange cost. A longer line haul to the unified line in between, therefore, is not of consequence to its terminal expenses on the longer haul traffic, whereas C&NW would save its full terminal costs on any shipments which it now handles for part of the haul, and which, after unification, it would no longer haul.

As has been shown, the evidence is convincing that applicants' estimate of potential diversion or loss by C&NW is substantially correct, and C&NW's efforts to show a larger loss has little, if any, probative support. The fact remains that C&NW would sustain a substantial loss as calculated by applicants previously discussed, and thus the imposition of certain conditions requested by intervener may be appropriate. A discussion of those conditions requested is in order.

In regard to the C&NW requested traffic conditions dealing with the establishment of new gateways at Oakes, located in southwest North Dakota, and at Crawford, located in northwest Nebraska, the record reflects physical plant layouts of facilities at each of those points indicating that each can accommodate substantial increases in traffic without additional investment. Both are clean and simple operations in uncongested areas, in contrast to the complex Twin Cities interchange. Presently the average daily interchange between C&NW and Northern Pacific at Oakes is six cars, and between C&NW and Burlington at Crawford is 30 cars. C&NW's present service to and from Oakes is less frequent than its service to and from Crawford, since the volume of traffic in recent years has permitted C&NW to operate trains only three times a week, except when livestock traffic justifies additional train service. The average consist of trains to Oakes is three loads and 11 empties per trip. Similarly, the light traffic has not justified more than minimum track maintenance. The grades and curves to and from Oakes are not excessive and C&NW could handle considerable increase in traffic over the line with present facilities. Northern Pacific now

provides six-day a week service to and from Oakes, where it also connects with Soo. Present Burlington and C&NW train schedules through Crawford interchange offer good service over the main lines of both roads. Tariff provisions applicable to transcontinental traffic interchanged with Great Northern and Northern Pacific restrict the use of routes via Oakes and Crawford, with minor exceptions, to a small area adjacent to those gateways. The present routing available through Oakes is generally available only to and from C&NW points on and west of a line of the C&NW between Twin Cities and Omaha. The exceptions as to certain transited traffic involve special circumstances. The routing via Crawford at present is even more limited than via Oakes, and that limited routing is of long standing. The Twin Cities gateway, on the other hand, is open to almost all transcontinental traffic which might move via C&NW and the Northern Lines. The practical effect of those tariff provisions, C&NW contends, is that it receives a maximum haul of 404 miles between Twin Cities and Chicago, instead of a haul 932 miles via Crawford, or 759 miles via Oakes, and that by way of contrast the Northern Lines have a haul via Twin Cities of over 1,700 miles to Seattle.

C&NW seeks opening of the Oakes gateway to the extent routing will be available to New Company through Twin Cities or through the Dakotas and Minnesota, and the opening of the Crawford gateway to the extent that New Company can haul traffic via Laurel through Crawford and from or to Burlington's lines in Montana, Wyoming and South Dakota through Alliance, Nebr. C&NW estimates that opening of both gateways, should such routings be unrestricted, would enable it to increase its revenue $1,256,559 annually. The traffic which C&NW seeks to interchange with the merged lines at Oakes can now be interchanged at Twin Cities or at the Missouri River crossing point of Sioux City, Iowa. Although after unification C&NW, under the standard routing condition (Exhibit 68), will continue to have the right to obtain that traffic for interchange via Twin Cities and Sioux

City, it seeks the additional gateway that will enable it to obtain on a shipment, for example, from the Twin Cities, the additional route available to divert the shipment via Oakes, 355 miles west of Twin Cities. The traffic which C&NW would interchange with the merged line at Crawford can be interchanged with it at the Missouri River crossing at Council Bluffs, Iowa. It seeks the additional right to solicit traffic from the merged lines by hauling it for additional distance of 468 miles between Crawford and the Missouri River.

As regards both Oakes and Crawford, not only would the potential haul of C&NW be longer with respect to traffic now interchanged at existing gateways of Twin Cities or Missouri River crossings but it is apparent that C&NW's ability to offer such longer hauls would tend to increase the total amount of traffic it would be able to obtain from shippers by diversion from the merged line.

C&NW asserts that one significant measure of relative efficiency is comparative mileages, and that the relevant comparisons cited are the mileages via the Oakes and Crawford routes with mileages over New Company routes and with mileages over New Company and C&NW via Twin Cities. It selected five stations west of Oakes and Crawford (Bismarck, N. Dak., Great Falls, Mont., Spokane, Wash., Portland, Oreg., and Seattle, Wash.) and five stations east of Oakes and Crawford (Omaha, Nebr., Des Moines, Iowa, Tulsa, Okla., Atlanta, Ga., and Chicago, Ill.) as representative of the traffic which would move via Oakes and Crawford gateways if the routes were open. In the comparisons between the Oakes and Crawford routes on the one hand, and New Company-C&NW routes via Twin Cities on the other, the Oakes or Crawford route was shorter in 15 of the 25 representative movements. Significantly, in 11 of 25 combinations, three via Oakes and eight via Crawford gateway produced shorter mileages than either the New Company routes or the New Company-C&NW routes via Twin Cities. The three via Oakes concerned distances between Bismarck and Omaha (109 miles shorter), Des

Moines (191 miles shorter) and Tulsa (102 miles shorter). In all eight via Crawford, the distances were shorter varying from 7 to 12 miles.

C&NW's proposal would no doubt have some effect on the long-established patterns of the movement of traffic. But by the unification applicants likewise propose a change in routing relationship because it will automatically open the Laurel gateway to Transcontinental traffic for movement over New Company between Chicago and the Pacific Northwest.

On a large part of the traffic, that which goes to, from or via Chicago, it appears that the distances for rail handling via the C&NW proposed gateways would be increased. For example, for traffic between Chicago and Bismarck the mileage via interchange with C&NW at Minneapolis is 835 miles. It would be 95 miles longer via Oakes. Between Chicago and Great Falls the distance would be 175 miles longer if interchange is at Oakes as compared to interchange at Minneapolis. Similar long hauls are involved via Oakes on Spokane, Seattle, and Portland traffic. The rates would be the same, but the railroads would have to provide longer and more expensive hauls if the traffic were interchanged at Oakes rather than at Minneapolis. On such transcontinental moves, it is obvious that the additional interchanges and cross-haul routes, standing alone, which the imposition of the conditions would create would result in somewhat less efficient and less adequate rail service.

C&NW's traffic conditions, dealing principally with the opening of Oakes and Crawford as gateways, were the subject of concern by some 15 public witnesses called by it. Those witnesses represented producers, shippers, and receivers in the lumber industry, a buildings material dealer, a farm cooperative, a manufacturer of heavy machinery, seed distributors, manufacturers of fertilizer, livestock operators and an electric and gas public utility which receives large shipments of coal. The advocacy of some of these witnesses was limited to a general statement favoring the conditions in order to help the C&NW financially or in order to help it increase its traffic or

service. Others called by applicants and a number of interveners, including Milwaukee, indicated some support for imposition of the conditions requested by C&NW. Some South Dakota shippers indicate they are so located that they must depend exclusively on Oakes interchange routing, complaining that under-utilization of the route permits C&NW to provide only three times a week service. Some support is predicated on assumption that increased traffic would justify daily service. Some expressed views that they had no idea of the volume of business which would be available if the gateways were opened but that they would be used for stopping in transit. Other shippers indicate their support is predicated on an expectation they would have available additional routes, and be able to widen their markets, obtain new stop-over privileges, obtain greater opportunity to combine New Company and C&NW stop off points, or to obtain improved opportunities to combine shipments, including part-unload shipments. While most of the witnesses were concerned with favoring conditions in order to help C&NW financially or in order to help it increase its traffic or service, others evidence some degree of need. Additionally, witnesses called by interveners Iowa, Michigan, Wisconsin, North Dakota, South Dakota and Agriculture, as well as for interveners Wisconsin Manufactures Association and Fargo Chamber of Commerce expressed strong support for appropriate conditions which would benefit the shipping public in the areas with which they are concerned. They expressed concern that C&NW traffic losses would result in a curtailment of essential transportation services in their areas and a lessening of rail competition.

C&NW estimates that opening of the Oakes and Crawford gateways would enable it to increase its revenues by $1,256,559, of which $917,439 would result from eastbound traffic and $339,120 would result from westbound traffic. Its first estimate (a loss of $835,000) was predicated on the number of cars (6,050 cars) which might be expected to move via those gateways, by commodity, to and from C&NW's northwest sales region, multiplied by C&NW's system average revenue per car for the com-

modities expected to move via those gateways. A later estimate (adding more than $400,000) increased the number of cars by 1,150 when it defined its origin and destination territories, and, in addition, it calculated the revenue per car on a different basis and used a 60 percent factor of increase on account of longer hauls via Oakes and Crawford. While its estimate is open to few criticisms, no separate estimates are provided by C&NW as to traffic expected to move via each of the named gateways. Its estimate thus provided is based on only 15 cars a year on the eastbound movement of sugar. It made no studies of the volume of potential traffic on any commodities that would be made available to it under its gateway conditions and could not state what percentage of the potential it expected to receive. Aware of the fact that thousands of cars would be open to its solicitation from the sugar refineries at several locations in the various states, the limited nature of its estimate is evidenced by the fact that only 15 cars were included in its estimate. For a large portion of the origin and destination area its estimate does not include any traffic. For example, the traffic in potatoes from the Red River Valley of North Dakota southward which it hopes to obtain via Oakes is estimated at zero. That estimate substantiates an earlier finding by the hearing examiner in respect of such traffic movement. However, applicants made no estimates of effect of potential diversion from the merged lines of opening of the named gateways, nor did it present any rebuttal evidence to C&NW's estimates of revenue the latter expected to derive from the opening of said gateways.

Applicants assert, however, that if there exists special situations where exceptions would be desirable in the public interest, as claimed by C&NW, the facts should be developed by appropriate proceedings under section 15 of the Act under the standards of which the interests of shippers are fully and fairly protected where the facts justify any such protection, and that a wholesale opening of the gateways between large origin and destination areas here sought and for "all freight" is not appropriate

or justified as a condition to unification. Here the applications presented involves a change in traffic pattern advocated by applicants which will, in some degree, affect intervener C&NW, among others. Applicants' proposal is one seeking permissive authority and they recognize that such authority may be appropriately conditioned. Cf. *Atlantic Coast Line R. Co.* v. *United States*, 284 U. S. 288 (1932), and *New York Central S. Corp.* v. *United States*, 287 U. S. 12 (1932). To gain the benefits of such permission, applicants must afford consideration to others in the transportation relationship. Others include connecting and competing railroads, producers, shippers and receivers, and those concerned with promotion of the economy in particularly relevant areas.

In evaluating the interests of others in relation to the proposal of applicants, it appears that imposition of the requested gateway conditions has some merit. While the record demonstrates only a moderate need for the gateway openings, it appears that opening of the Crawford gateway would be beneficial to the shipping public and be operationally sound, whereas opening of the Oakes gateway would provide little real advantage if any, to the shipping public or the carriers involved, for reasons previously mentioned. Moreover, opening of the Crawford gateway, because it is on the main lines of both C&NW and Burlington would enable C&NW, so long as it is a separate railroad, to obtain the full advantage of its long haul which is now limited in transcontinental routings via Twin Cities, and in only a limited way affect New Company in its long-haul operations.

Such a condition, as thus modified, is not onerous, but on the contrary should prove beneficial to producers, shippers, receivers and to participating carriers. However, the opening of the Crawford gateway, not on the limited basis advocated by C&NW solely to benefit the latter, but on a strictly reciprocal basis, that the shipping and receiving public may benefit, appears to the hearing examiner to more nearly meet the requirements of the situation. Accordingly, the recommended findings will be appropriately conditioned.

Referring now to C&NW's operating conditions, it is noted that a substantial portion of unification savings would result from proposed changes in terminal handling among the applicant railroads in two areas. Of the total savings of $39,904,670 expected to result from unification, $8,306,684 would occur at two terminals $5,613,077 at Twin Cities and $2,693,607 at Head-of-the-Lakes. Thus, 19 percent of all savings are those which can be effected by improved applicants' operations at those points. Benefits from such changes in the terminals not being limited to just dollars it is readily observed that other benefits would likewise be available, such as reduction in transit time, and savings in terminal handling, which would be an inducement for shippers to use New Company's services. Thus, C&NW could not with its two-line service meet the time of New Company's singel-line service through those terminals. Efforts to expedite C&NW-New Company interchange are therefore important as an aid to C&NW's ability to solicit traffic. Efforts by C&NW to come to an agreement with applicants concerning coordination of terminal operations came to naught.

As indicated, C&NW requests imposition of eight operating conditions. The first, dealing with improved interchange relations between C&NW and New Company at Minneapolis is considered by C&NW the most important in terms of potential reductions in time and expense. Presently, there are several points of interchange for traffic betwen C&NW and applicant railroads at Minneapolis and there exists great opportunities to simplify interchange between C&NW and New Company so that the right car is at the right place in the shortest period of time, all consistent with applicants' proposed plan for improvement of New Company's terminal handlings. It contends the inevitable result is that it often receives interchange cars at locations which require subsequent moves from yard to yard causing unnecessary expense and delay, and recognizes that applicability of that situation here. It seeks a simplification of the situation. In lieu of the present four interchange points at Minneapolis it proposes only two, one in southwestern Minneapolis

and one in East Minneapolis under the condition which would provide that New Company deliver C&NW cars classified at its new Northtown yard either to C&NW's Cedar Lake yard in southwestern Minneapolis or to C&NW's East Minneapolis yard, as specified by C&NW.

Since the New Company's proposed electronic classification yard at Northtown (some five or six miles north of C&NW's train yards at Minneapolis) will permit that separation at no extra work on New Company's part, C&NW would deliver cars to New Company at the latter's Lyndale yard (adjacent to C&NW's Cedar Lake and Lyndel yards), as C&NW does not for Great Northern, and at the New Company's Union yard (adjacent to C&NW's East Minneapolis yard), as C&NW also does now for Great Northern. The proposal would permit C&NW to save from four to six hours vital switch time on all through cars, and on some other cars much more time, and permit C&NW to reduce its cost approximately $100,000 annually and eliminate one or two switch engines and crews, and at the same time create no burden for New Company.

While applicants have contended that principles of reciprocity should apply, thus requiring C&NW to deliver its cars to the new Northern yard, which would require C&NW to pay for using New Company's tracks to effect delivery at that point, it appears that C&NW's proposal is more equitable in that it will reduce present interchange points from four to two, and is quite simple.

Applicants did not rebut the proposal, but made a counter suggestion that would place C&NW in a more disadvantageous position. It was suggested that since the new Northtown yard would permit rapid and efficient separation of cars into groups one would be hauled to C&NW's East Minneapolis yard, and the other hauled to C&NW's Lyndale yard making the Twin Cities interchange exactly as requested by C&NW, but that principles of reciprocity should apply and that C&NW should deliver its cars destined New Company to the latter's new Northtown yard some five or six miles north of C&NW's yards and over tracks of the New Company.

In support, it was indicated that it was customary for a railroad to ask other railroads to deliver interchange cars to the receiving road's main train yard. Under present arrangements, C&NW delivers cars to the Northern Pacific at the latter's Lower yard and Park Junction, neither of which are man train yards. Northern Pacific then performs the service from Lower yard and Park Junction to its main train yard at Northtown. Applicants argue on brief that there is nothing fair about C&NW's desire to have the merged line perform all the interchange of both roads in both directions, that under general railroad practice, the receiving road designates the point of acceptance, that for cars to be received by New Company from C&NW the receiving point should be the new Northtown yard, as soon as it is in operation, and that C&NW by making one delivery to merged company would be relieved of the excessive chore of making deliveries in three separate cuts to Great Northern, Northern Pacific, and Burlington as at present. Under the suggestion of applicants, C&NW would perform the service, which would entail other costs as well.

Significantly, the Wyer Report contemplates that interchange would be made as proposed by C&NW—that New Company would perform the service between the yards such as Lyndale and Union on the one hand, and, Northtown, on the other. The effect of the change in the delivery of cars by the New Company to C&NW would be faster operations through the Twin Cities on all traffic, the reduction of car handling cost to C&NW by the elimination of unnecessary transfer runs, and the reduction in the number of cars charged against the C&NW in prorating certain maintenance costs of jointly used trackage in the Minneapolis area. The net result of the suggestion of applicants would be to deprive C&NW of the opportunity to eliminate switch engines and crews and possibly entail enough additional work to require C&NW to add engines and crews and unnecessary complicate what can be a relatively simple interchange.

In the opinion of the hearing examiner, C&NW's proposal is sound, evidences the efficiencies and economies

of operation that should be encouraged. Moreover, it is fair to the parties and should be adopted. The question is not who makes the delivery—but at what point delivery is made. Thus, the hearing examiner concludes that following unification New Company should deliver interchange traffic to C&NW at the latter's Lyndale and East Minneapolis Yards, as the C&NW may designate, and the C&NW should deliver interchange traffic to New Company at the latter's Lyndale and Union yards. The proposal by C&NW is fair and reasonable and the contracts providing for payment of fixed rental for tracks and facilities which would no longer be used by C&NW between Minneapolis and St. Paul (including the 4th Street yard), in the event of unification, should be superceded.

C&NW's second operating condition deals with contracts providing for use by it of Northern Pacific tracks between Minneapolis (20th Avenue) and St. Paul (including the 4th Street yard). Under two separate contracts, one with Great Northern, the other with Northern Pacific, C&NW operates over applicants' tracks between Minneapolis and St. Paul. The Wyer Report dealing with operations in the Twin Cities area, contemplates that on unification, C&NW would only operate over the present Great Northern line and makes no provision for cancellation of the contract between C&NW and Northern Pacific which require C&NW to pay fixed rentals in excess of $52,000 annually. C&NW argues that unless the Northern Pacific contract is superceded, the charges would continue even though C&NW makes no use of the line. Applicants contend that upon completion of the Northtown yard there will be a rearrangement of facilities at various points in the Twin Cities area, which will include abandonments of certain portions of present Northern Pacific trackage involved. Further, applicants contend negotiations would be necessary with C&NW and other railroads in the area to work out the best arrangements for the handling of traffic, and that it is premature to attempt at this time to specify the details that will result from such negotiations but the parties will

later have full cognizance of the relevant circumstances and the merged company will cooperate not only with C&NW but with other roads concerned to arrive at an equitable solution. Applicants argument is not persuasive. Upon unification there would be no need by C&NW for the Northern Pacific segment under discussion and no clear reason exists why applicants cannot effectively terminate that agreement thus enabling C&NW to enjoy the fruits of an early savings. Such action would have no affect on the physical properties or their present use by applicants or their prospective use when applicants get around to deciding what they want to do with it. To require C&NW to continue to make payments for property no longer needed or used is entirely unfair. The proposal by C&NW is fair and reasonable and the contracts providing for payment of fixed rental for tracks and facilities which would no longer be used by C&NW between Minneapolis and St. Paul (including the 4th Street yard), in the event of unification, should be superceded.

C&NW's third operating condition deals with sale or lease to C&NW of specified Union yard trackage owned by Great Northern. C&NW asserts it can make effective use of some of the tracks in that yard which would not be needed by New Company under the recommendations in the Wyer Report. C&NW indicates that use of the tracks would permit it to make up trains without doubling, reduce the amount of switching time in the yard, and expedite interchanges with New Company. Applicants offered no rebuttal nor have they evidenced agreement to the proposal. On brief, applicants indicate that the feasibility of such a transfer cannot be decided except in relation to the overall arrangement which will be worked out with all roads in the Twin Cities area, and that it is too speculative at present to know whether the particular tracks which C&NW desires to acquire would be reasonably needed for use by the New Company or other roads. Applicants' argument has merit. This condition does not deal with a potential saving or on the other hand a hurt to C&NW. It seems that the subject matter is one more appropriate for negotiations aside

from these proceedings. C&NW's request for the imposition of a condition requiring New Company to sell or lease to C&NW specified trackage in Union yard is without merit and should be denied.

C&NW's fourth operating condition deals with the Great Northern Minneapolis passenger station. The contract covering C&NW's use of the Great Northern's Minneapolis passenger station was executed by a predecessor in 1886 and provides for expiration in 1979. It was assumed by C&NW as part of the transaction authorized in Finance Docket No. 19432, *Chicago, St. Paul, Minneapolis & Omaha Lease*, 295 I.C.C. 441 (1956). Although the contract or a resume thereof is not of record, certain details sufficient to make an appropriate determination have been provided. As amended, it requires C&NW to make rental payments without regard to use and to make contributions toward operating and maintenance expenses which are based on use. The rental formula requires C&NW to pay two percent per year on the valuation of the facilities. In 1930, C&NW passenger and related traffic constituted over 25 percent of the total use of the facilities. During the early stages of this proceeding its uses constituted about five percent. Its rental payments have continued at a rate over $100,000 annually. It has since been permitted to discontinue its last passenger trains into that station, under authority granted in Finance Docket No. 22425, *Chicago & North Western Railway Co., Discontinuance*, I.C.C. , decided July 18, 1963. Applicants argue that C&NW having obtained permission to become the lessee of the properties including the use of the terminal, it is unreasonable for it now to be seeking a reformation of the contract to eliminate the rental obligation assumed.

Fairness and equity require that since C&NW no longer has any use for the facility, is no longer using the facility, the requirement to continue to make payments for which it receives no real return is unfair burden. Moreover, it is an unfair burden that applicants could well afford to remove in view of the circumstances of the proposed unification and an expressed desire to unify with

a minimum of harmful or adverse effect on its competitors and connections. While from a strictly contractual basis, applicants could well insist that the terms of the contract be carried out in all respects, it is faced with an opportunity to demonstrate its concept of fairness insofar as are concerned its dealings with competitors and connections. Since the contract is not of record, it is now known whether it contains a provision for cancellation with a penalty clause or negotiation clause prior to the fixed date for termination. On the basis that it does not have such a clause, a requirement that upon unification New Company shall offer to rescind the provision of the contract between C&NW and Great Northern which requires the C&NW to pay rental for the use of the Great Northern passenger station at Minneapolis and related facilities would not be unreasonable and would not create an undue burden on New Company and would relieve C&NW from continuing burdensome payments for facilities for which it no longer uses. The recommended findings will be conditioned accordingly.

By C&NW's fifth proposed operating condition dealing with charges for handling empty cars on A.A.R. bridge and pick-up orders over New Company tracks, it seeks cancellation of trackage charges for use of certain tracks at the Twin Cities when it uses those tracks for delivery to the merged line of empty cars pursuant to A.A.R. car service orders. The savings from cancellation are de minimus; they might run about $3,500 annually. C&NW anticipates that the A.A.R. orders, after unification, will divert a considerable number of bridge cars to the merged line at Chicago rather than at other points. Moreover, it is only at times that the A.A.R. gives specific orders as to what gateway to use in delivering empties. The fact is that C&NW, after unification, will be able to return empties at various locations, saving itself the expenses for the haul, for example, from Chicago to Twin Cities. Thus, there is no need for imposition of C&NW's proposed fifth operating condition.

C&NW's sixth and seventh proposed operating conditions deal with operation at the Head-of-the-Lakes. C&NW

proposes that New Company be required upon unification to (1) permit direct interchange between C&NW and Soo in Duluth (2) grant such trackage rights to the DW&P Railroad, at a reasonable use charge, as will permit a direct interchange between C&NW and DW&P at Duluth, or (3) withhold objection to direct interchange between C&NW and DW&P via LST&T tracks at Superior. At the hearing it was developed that a study was underway by LST&T with respect to the expense, cost and procedures to be adopted to effect direct interchange of cars at Superior. The study in progress for several months had produced no conclusions. C&NW has a representative in LST&T and on the committee for the study. The latest information developed of record was that there was a question of personnel matters involved and the directors of personnel of the owner roads were to give recommendations that certain things could take place or not. It is obvious that the matter is complex and is under serious study. Until such studies are completed, the various factors that will affect the reasonableness of the possible alternative conclusions are not known by any of the parties or to the other railroads which are involved in the matter at Superior and Duluth. It is evident that all parties are in fact cooperating in seeking an appropriate disposition of the question and the proposed condition is premature. If the final solution has not been reached before consummation of the unification transaction, the applicants assure the merged company will continue to participate in the studies with a view to reaching an early and satisfactory solution. Since advance assurance of a particular course of action on the subject cannot be given the conditions requested should not be imposed.

C&NW's eighth proposed operating condition deals with a requested imposition of a clause in C&NW operating contracts with applicant railroads providing for cancellation on 90-days' notice by the party given the right to use the facility which contracts would be assumed by New Company. C&NW summarized 43 of the outstanding contracts. The selection was confined to those on

which the billing by or against C&NW exceeded $2,000 in the year ended June 30, 1961. There were 126 additional operating contracts on which the billing in that year was less than $2,000 but no information as to those 126 contracts was submitted other than the statement that they covered such matters as switching, trackage rights, crossing protection, maintenance of crossing frogs, and use of scales. In addition to the 43 contracts summarized and the 126 other contracts enumerated, there are numerous operating contracts for which there is no billing. No information was provided for the record for those numerous contracts.

Out of the 43 contracts which C&NW summarized, it indicated only one which it considered unfair to it. The terms of that contract were the subject of a report and order of the Commission in *Chicago & North Western Railway Company Trustee, et al., Abandonment, etc.*, 254 I.C.C. 820, and relates to use by C&NW of Burlington's tracks between Illco and Shobon, Wyo. It is subject to cancellation by either road on 90 days' notice whenever the road so deciding to cancel wants to abandon its operations in that area. Such abandonment would require Commission approval. While the cancellation clause therein is not disadvantageous to C&NW, any modification thereof would only be appropriate in the cited proceedings, and not here.

The cancellation clauses in the 43 contracts summarized vary in their terms depending upon the subject matter of the contract. On several of the contracts the termination is automatic on cessation of use or bills are rendered only when services are performed, so that cessation of use actually becomes termination. Others have one, two, three or six-month or one-year cancellation clauses, with appropriate relation to the circumstances of the particular contracts.

The unfairness of the proposal is obvious. Moreover, on cross-examination, a principal C&NW official conceded that one of the principal factors behind the proposal is a prospective merger of C&NW with another railroad, which has no relationship to these proceedings.

In view of the above, C&NW's requested condition seeking imposition of a 90-day cancellation clause in operating contracts between C&NW and applicant railroads is without merit and should not be imposed herein.

As indicated, C&NW also requests that if the Commission imposes Milwaukee condition 1, Milwaukee should be required to open its western junctions to routings via C&NW on all traffic interchanged by Milwaukee and New Company pursuant to Milwaukee condition 1. C&NW points out that the practical effect of Milwaukee condition 1, as proposed, would be to close routes to C&NW which are now open, which it fears, thus further worsening C&NW's revenue position as a result of unification. After unification, although C&NW expects that some traffic between Twin Cities and Chicago will be vulnerable to New Company solicitation, it will have the opportunity to solicit traffic handled to or from Twin Cities by New Company. If Milwaukee were permitted to solicit for New Company traffic via western junctions and then could close the Twin Cities gateway to C&NW, the latter would lose the opportunity to move such traffic to and from Twin Cities. C&NW overlooks the solicitation opportunity which would accrue to it by virtue of the opening of the Crawford gateway enabling it to solicit for the longer haul. However, in view of the conclusions reached, Twin Cities would remain an open gateway to both Milwaukee and C&NW, thus there would be no need for imposition of the subject condition requested by C&NW.

Thus, imposition of C&NW's requested conditions, as herein modified, while not making C&NW whole, should enable it to maintain a revenue position competitively speaking, and insofar as the facts here are involved, compatible with the public interest and insure its ability to continue to carry out its common carrier obligations.

In summary, as indicated, each of the intervening railroads, whose positions and operations are discussed herein, suggested conditions tailored to provide protection against the consolidated company's proposed plans to reroute traffic which would in some respects affect the hauls of the connecting railroads, or reduce their proportion of

the joint-rate revenues presently applying over the routes in which the interveners participate, or otherwise attract traffic from their lines. Applicants, cognizant of the many prior proceedings in which the so-called "standard routing conditions" have been imposed, suggested similar conditions and indicated their willingness to accept imposition of them. These conditions, as modified by the stipulation between applicants and Union Pacific, and agreed to by other intervening railroads (except Milwaukee and C&NW), together with supplemental special conditions covered by described stipulations between intervening railroads (except Milwaukee and C&NW), and applicants, are designed to provide specific protection to each of the carriers involved, and reduce, or eliminate, anticipated harmful effect of the proposed unification.

Applicants consider the conditions proposed by Milwaukee and C&NW, to the extent they would add restrictions not embraced in the standard routing conditions or in effective agreements between the applicants and connecting railroads, to be unjust and unreasonable, and request they not be imposed. They point out, correctly, that it is inherent in any consolidation or merger of railroads that there will be some shifts in traffic to and from the unified line as a result of the change. Great reliance is placed by applicants on the professional studies of the unification conducted by their consultants, previously discussed, indicating that at the time when the feasibility of the proposed unification was being considered, one of the subjects studied was the extent to which the gross revenues of the unified company would be increased through gains made from other roads and the offsetting extent to which the unified company would lose revenues to other roads. Applicants point out that the accuracy of the consulants' estimates was attested to by the president of Soo who indicated that it was the conclusion of Soo's committee (composed of a group of its officers appointed to appraise the impact of merger of applicants upon Soo), "that the merger would produce a loss in freight revenues about as estimated by applicants."

The results of such a professional study, which has been checked and confirmed by another affected railroad,

not only are questioned but are claimed by Milwaukee to have no approximate relationship at all to the probable results of the unification. However, for reasons previously stated, the hearnig examiner is convinced that, upon consummation of the proposed unification transactions, the interests of the various railroad interveners which have entered into the described stipulations, with applicants, or have requested imposition of special conditions, will be adequately protected by imposition herein (1) of the standard routing conditions as modified by the Union Pacific stipulation and (2) those specific conditions previously discussed which have been found to be warranted by the facts and circumstances of record, as just and reasonable. Imposition of such conditions should likewise protect and affirmatively promote the interests of the shipping public and should be prescribed in any approval herein, and the findings will be appropriately conditioned.

Other interveners—In support.

A number of interveners entering their appearances support the proposed unification for various reasons, for the most part concerned with matters arising out of the proposed unification peculiar to their own self interest. Generally, they support unification for the advantages discussed. While their respective interests are in part somewhat repetitious to those of other support previously covered, because of their intervention they should be identified, and are thus summarized.

Intervener Alliance (Nebraska) Chamber of Commerce, an organization of businessmen concerned with improvement of its trade area and town services, is located on the lines of Burlington in western Nebraska. Alliance found its origin as a stopping point on the Burlington. Intervener's support is predicated on advisories by Burlington representatives that unification would be advantageous, in that traffic could be rerouted through Alliance to eastern markets and single-line service would be provided between Alliance and the Pacific Northwest.

Intervener Billings Traffic Bureau, of Billings, which provides transportation consulting service to the Billings

[Continued in Appendix Volume III]